

86-1025①

NO.

Supreme Court, U.S.  
FILED

DEC 20 1986

JOSEPH F. SPANIOL, JR.  
CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 1986

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RE:

EARLENE POLYAK  
Petitioner

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PETITION FOR EXTRAORDINARY WRIT OF CERTIORARI  
TO THE SUPREME COURT OF THE UNITED STATES  
FROM THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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EARLENE POLYAK  
3179 Middlefield Drive  
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123PV

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR  
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ISSUED.

QUESTIONS PRESENTED

1. Is the failure of attorney for Respondents to serve certificate of service of costs and fees affirmed in Court of Appeals and allow Petitioner objections deprivation of due process?

2. Does the division of loyalties by attorney in favor of Respondents and lack of assistance of trial counsel for Petitioner present constitutional question warranting New Trial?

3. Is the insertion of unappealable judgment by attorneys for Respondent when pro se litigant instructed to appeal by Trial Judge resulting in dismissal of appeal and final order contingent on sale of property putting forth nonfederal grounds to defeat jurisdiction of the Supreme Court?

4. Does the claim of res judicata based on unappealable judgment in lower courts render order of appellate court null and void and warrant new trial?

5. Is denial of continuance supported by physician's statements and Petitioner obligated to defend right to property while acutely ill for a second time in state courts deprivation of due process?

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NO.  
IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term 1986

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RE:

EARLENE POLYAK

Petitioner

VS

FRANK HULEN AND  
WILMA LESNANSKY

Respondent

---

PETITION FOR COMMON-LAW WRIT OF CERTIORARI  
TO THE SUPREME COURT OF THE UNITED STATES  
FROM THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

---

Petitioner Earlene Polyak, petitions the  
issuance of a common-law writ of certiorari under  
28 U.S.C. 1651(a), for relief sought which is not  
available in any other Court, or appellate process.<sup>1</sup>

<sup>1</sup>Cases: Appeal No. 85-5032/5101/5147, (D.C. No. 1:  
84-0083), Earlene Polyak v Frank Hulen and Wilma  
Lesnansky.

Case: Appeal No. 84-6090, (D.C. 1:84- 0082),  
Frank Hulen and Wilma Lesnansky v Earlene Polyak.  
This case was consolidated over objections of  
Petitioner with Appeal No. 85-5032/5101/5147.  
Supreme Court Nos. 85-1975, 85-1991, and 85-86-35.

Related Cases: Appeal No. 85-6135 (D.C. No. 1:  
85-0120), Buford Evans & Sons v Earlene Polyak,  
Supreme Court No. 86-182.

Related Cases. Appeal No. 85-6134 (D.C. No. 1:85-  
0116) Earlene Polyak v Jim Hamilton and the Circuit  
Court of Lawrence County, Tennessee.

Related Cases No. 85-5199(D.C. No. 1:85-0120), Earlene Polyak v Thomas Stack Henry Henry & Stack(pending in lower Courts).

Related Case D.C. No. 3:85X-108, Earlene Polyak v William Boston Bates & Holt(denied filing in District Court).

Related Cases No. 86-5916(D.C. No. 1:86-0036), Earlene Polyak v William Boston Boston Bates & Holt(pending in lower Courts).

Related Cases Appeal No. 86-5536, Re: Earlene Polyak v THE HONORABLE THOMAS A WISEMAN'S ORDER OF MAY 2, 1986, CLOSING CASES, AND ENJOINING APPELLANT FROM FILING FURTHER CASES IN THE UNITED STATES DISTRICT COURT.

#### OPINIONS BELOW

The opinions in Appeal No.85-5031/5101/5147, and Appeal No.84-6090, consolidated over objections in Court of Appeals, Supreme Court Nos. 85-1975, 85-1991, and 86-35 are set forth in Appendix A<sup>1</sup>. The opinions in Appeal No. 85-6135, Supreme Court No.86-132, are set forth in Appendix A<sup>2</sup>. And the opinions in Related Cases are set forth in Appendix C.

#### JURISDICTION

The jurisdiction of this Court is set forth in petition seeking issuance of common-law writ of certiorari under 28 U.S.C. 1651(a) to review opinions of the United States Court of Appeals, United States District Court, Circuit and Chancery Courts of Lawrence County, Tennessee.

CONSTITUTIONAL PROVISIONS

The pertinent portion of the Fifth Amendment:

No... person shall be deprived of life, liberty of property without due process of law; nor shall private property be taken for public use without just compensation.

U.S. Const. Amend V cl 3&4.

The pertinent portion of the Seventh Amendment:

...where the value in controversy shall exceed twenty dollars, the right of a jury trial shall be preserved....

U.S. Const. Amend VII.

The pertinent portion of the Eight Amendment:

...not excessive fines imposed, nor cruel and unusual punishment inflicted.

U.S. Const. Amend. VIII.

The pertinent portion of the Fourteenth

Amendment:

No State shall make or enforce any law which shall abridge the privileges or immunities of Citizens of the United States; Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV.

28 USC 1443 Any of the following civil actions...

commenced in a State Court may be removed by

defendant to the district Court...

- (1) Against any person who is denied or can not enforce in the Courts of such State a right under any law providing for equal civil rights of citizens of the United States or of all persons within the jurisdiction...

(2) For any act under color of authority deprived from any law providing for equal rights...

42 USC Sec. 1981:

All persons within the jurisdiction of the United States shall have the same right in every State to make and enforce contracts, to sue... to the full and equal benefit of all laws

42 USC Sec. 1982:

All citizens of the United States shall have the same right in every State... to inherit hold purchase lease and convey real and personal property.

42 USC Sec. 1983:

Every person, who under the color of any statute, ordinance, regulation, custom or usage of any State... subject or caused to be subjected any citizen of the United States or other person within its jurisdiction there to the deprivation of any rights privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in the action at law in equity or other proper proceedings for the parties.

28 USC 1651(a):

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principals of law. No sixty-day li

28 USC 1254(1):

By writ of certiorari... before of after... judgement or degree...

28 USC 1257(3)

By writ of certiorari where validity of ...

a State statute is drawn in question... or title, right, privilege or immunity is set up or claimed under the Constitution, treaties or statutes of, or commissions held or authority exercised under the United States.

28 USC 2403:

(b) In any action, ... where the constitutionality of a statute of that state affecting public interest is drawn in question....

RELIEF SOUGHT IS NOT AVAILABLE  
IN COURT, OR APPELLATE PROCESS

Petitioner is obligated as a pro se litigant to seek the issuance of an extraordinary writ under 28 U.S.C. 1651(a), for relief sought in inherited right in kind and severalty as supported by Tennessee statute, in retirement home and investment in restoration and maintenance since settlement by agreement in 1976, in the deprivation of due process civil and constitutional laws in the Courts.

Relief sought is not available in any other Court as Motion for a New Trial has been denied in Trial Court, complaints are dismissed without hearing in the United States District Court, and all appeals are dismissed in docket control, and the opinions of the lower Courts are affirmed in the United States Court of Appeals. All petitions for rehearing have been denied in the Supreme Court.

STATEMENT OF THE CASE

This case involves the deprivation from the pro se ligitant of her real and personal property and retirement home without due process of law, and the denial within the State of Tennessee of the equal protection of the Constitution and laws as supported in the Fourteenth Amendment. It involves the amendment of Rule 5(a) by the legislature of Tennessee which provided for a copy of the Notice of Appeal to be filed with the Court of Appeals. Petitioner believes this amendment serves as a law used to discriminate against race, sex, non-residence and the pro se ligitant, and deny appeal as a right.

The United States Court of Appeals for the Sixth Circuit affirms the protection of the United States District Court, Middle District, in the deprivation of the pro se ligitant's private property to be taken in the State of Tennessee without due process for sale at Public Auction without just compensation for settlement by agreement in 1976, and ten(10) years of investment in restoration and maintenance in violation of the Fifth Amendment.



Petitioner submitted complaint for inherited right in kind and severalty supported by Tennessee statute on October 18, 1984, under diversity of citizenship in the United States District Court, No. 1:84-0083, Earlene Polyak v Frank Hulen and Wilma Lesnansky, Appeal No. 85-5032/5101/5147(App. A<sup>1</sup>p.18). This complaint was submitted after the Honorable Thomas A. Wiseman, District Judge, dismissed Petition to Remove Case No. 1974, from the Chancery Court of Lawrence County grounded in the denial by State Courts of due process civil and constitutional rights in violation of the Fourteenth Amendment Case No. 1:84-0082, Frank Hulen and Wilma Lesnansky v Earlene Polyak, Appeal No. 84-6090(App.A<sup>1</sup>p.20), pursuant to 28 USC 1443.

Complaint No. 1:84-0083, with jury demand and alleged jurisdictional amount was dismissed on December 3, 1984, without any kind of hearing. Ms. Sherry Tipton, Deputy Clerk held objections to award of attorney fees and costs to Robert Boston on January 9, until February 4, 1985, resulting in three appeals for pro se litigant to get case to appeal at cost of \$280.00. Robert Boston submitted services composed mostly of long distance

telephone calls to his father, William Boston, Boston Bates & Holt, who represented the family since 1976, before dividing loyalties(App.A<sup>1</sup>p.40&41).

Cases No. 85/5032/5101/5147, were consolidated with 84-6090, on Robert Boston's motion over Petitioner's objections in the Court of Appeals. These cases were dismissed in docket control on December 17, 1985, and Petition for Rehearing En Banc was denied on February 13, 1986. Mrs Yvonne Henderson, returned timely submitted Notice of Appeal on March 17, 1986. Petitioner does not have any means to determine whether the return of Notice of Appeal by the Case Supervisor was used to deny jurisdiction by the Supreme Court in Appeal No. 86-35 on October 1, 1986. Appeal Nos. 85-1975, and 85-1991 were denied on the same day. Petitions to Rehear were denied on December 1, 1986.

The Honorable Jim Hamilton, Judge of Chancery Court of Lawrence County verbally ordered retireme home sold within two hours, while the jury was out on another trial on July 29, 1983, in a county other than complaint filed in Columbia, Tennessee (App.A<sup>2</sup>p.7).The hearing of complaint in county other than filed is violation of Tennessee laws.

Petitioner first raised the constitutional question hat she had been subjected to an unfair and unjust hearing in the in the State Court within three days when she demanded a New Trial on August 1, 1983, to Thomas Stack, Henry Henry & Stack. After Judge Hamilton verbally ordered property sold on July 29, 1983, Thomas Stack asked to submit Menorandum Brief(App.A<sup>1</sup> p 5 6 7).

Thomas Stack signed order for sale of property over Petitioner's objections to him and Judge Hamilton on October 19, 1983( App.A<sup>2</sup> p.7 ). Order was prepared by William Boston and signed by William Boston, Thomas Stack and Judge Hamilton. After repeated demands of Petitioner for a New Trial and ~~talk~~ of dismissal, Thomas Stack filed Motion for a New Trial or for Alteration and Amendment of Judgment(App.A<sup>1</sup> p.8 ).

On December 19, 1983, Petitioner confronted Judge Hamilton with an unjust and unfair hearing on July 29, 1983, and again raised the constitutional question of due process and deprivation of civil and constitutional rights. She based her demand for a New Trial on facts:(1) she was taken across county lines for hearing in Maury County

against Tennessee law;(2) Plaintiff Wilma Lesnansky did not come to hearing or testify and valuable evidence was withheld about settlement by agreement in 1976;(3)Alex Polyak did not get to testify, he did work and was present during division of lines;(4)Appellant was obligated to testify while desperately ill due to 102 degree heat wave and nationwide warning to heart patients in effect she asked Mr Stack twice to delay hearing for her to get better;(5) Petitioner's hearing was not given adequate time and consideration due to being held while the jury was out on another trial.

Judge Hamilton denied New Trial or for Alteration or Amendment of Judgment to allow Petitioner money for restoration and (7) year investment. Judge Hamilton instructed Petitioner to get appeal in within ninety (90)days, unappealable judgment prepared by Boston Bates & Holt, signed by Charles Holt, and Order dismissing Thomas Stack, Henry Hen & Stack on January 10, 1985(see App.A<sup>1</sup>p. 11).

Brief on Appeal was never heard and Statement of Evidence suppressed when appeal dismissed on April 26, 1984, by the Court of Appeals of Tennessee as a result unappeable judgment( App. A<sup>1</sup>p.14 ).

Petitioner was sued by Buford Evans & Sons on July 26, 1984, in the Circuit Court of Lawrence County, for survey of land without her knowledge or permission. Mr. Evans alleges that Thomas Stack Henry Henry & Stack retained him for survey. She believes survey invalid and found correlations in order for sale. Petitioner believes Mr. Evans map will be used to sell property at her expense (App.A<sup>2</sup>p.9). She understands all Court ordered sales conducted at Public Auction and in violation of the Fifth Amendment. Eulan Hooper is named to sell property and is on probation with the Tennessee Board of Realtors.

Petitioner was subjected to another unfair and unjust trial by Judge Hamilton on December 26, 1984. She was again desperately ill due to heart acute bronchitis and physician's again recommended that she go to Florida in warm weather. Petitioner submitted Motion for a Continuance, which was disregarded by Judge Hamilton as all of her motions, requests and petitions. Finally, she submitted a Motion for Judge Hamilton to disqualify himself, as she believed that his prejudice toward her interfered with his hearing trial (A<sup>2</sup>p.15).

Judge Hamilton overruled motion for disqualification on December 26, 1984. Petitioner objected again to being subjected to trial in which she was unprepared and while acutely ill, and stated action was cruel and unusual punishment and unconstitutional to the eight Amendment(App. A<sup>2</sup>p.18). Judge Hamilton continued with trial allowing former attorney Thomas Stack testify and present confidential information(App.p.18 ).

Judge Hamilton denied motion to forward record to the Court of Appeals of Tennessee to allow appeal on November 7, 1985. Petitioner was informed that Rule 5(a) was amended and copy of appeal was no longer filed with the Court of Appeals(App. A<sup>2</sup>p.27). Petitioner believes the amendment of this Rule 5(a) allows for discrimination against race sex non-resident and pro se litigant pursuant to 1443.

Petitioner submitted complaint to the United States District Court as she believed she had been denied in the State Courts due process, civil and constitutional rights against Jim Hamilton and the Circuit Court of Lawrence County No.1:85-0116 on November 8, 1985. She joined to 1:85-0116 under 28 USC 1441(c), Case No. 1:85-0120, Buford



Evans & Sons v Earlene Polyak(App.A<sup>2</sup>p.32)and joined Earlene Polyak v Thomas Stack Henry Henry & Stack, and Earlene Polyak v William Boston Boston Bates & Holt No. 3:85X-108.to 1:85-0116,under 1441(c).

The Honorable Thomas A. Wiseman dismissed Case No. 1:85-0116, within five days on November13, 1985, without any kind of hearing, and enjoined Petitioner from filing further cases in the United States District Court(App. G p. 5 ).

Judge Wiseman dismissed Buford Evans No. 1:85-0120, and remanded the case back to the State Court. Petitioner found that remand could be appealed under 1443. Mrs. Yvonne Henderson, Case Supervisor dismissed Appeal No.85-6135, after a conversation with Mr. Evans'attorney,Larry Brandon(App.A<sup>2</sup>p.40). Mrs. Henderson allowed Petition to Rehear, which was denied on May 12, 1986. Petitioner submitted timely Notice of Appeal, but notice was returned by Mrs. Henderson. Petitioner does not have any way of knowing whether return of Notice of Appeal was cause for lack of jurisdiction No. 86-182. Petition to rehear has been denied by this Court on December1, 1986.

Case No. 1-85-0116, has been dismissed

in the Court of Appeals. A Notice of Appeal has been submitted to the Supreme Court of the United States.

Petitioner submitted complaint against Thomas Stack Henry Henry & Stack No. 1:85-0125, after she learned that her many suspicions that they were not representing her best interest were true. In addition to signing order of October 19, 1983, without any compensation for Petitioner, she found that bills for restoration, memorandum brief, real estate evaluation, and a transcript of the proceedings have not been provided for the record. Judge Wiseman found evidence in allegations of malfeasance and negligence (App. C p.6). Judge Wiseman disregarded all motions to schedule jury trial and Petitioner was obligated to submit writ of Mandamus on April 23, 1986, which was dismissed by the Court of Appeals in docket control.

Judge Wiseman denied filing case against William Boston Boston Bates & Holt No. 3:85X-108. Petitioner feels that Mr. Boston represented her for seven (7) years then divided loyalties and failed to protect civil and constitutional rights to her and her property. She submitted another



complaint for jury trial which Judge Wiseman disregarded. Petitioner submitted Writ of Mandamus, on April 24, 1986, which was dismissed in docket control in the Court of Appeals. Judge Wiseman did respond to writ of mandamus with a letter to Mr. John P. Hehman on April 30, 1986(App.C p.2 )

In this letter, Judge Wiseman stated that"  
the previous order of November 13, 1985, whereby  
Mrs Polyak was enjoined from filing any further  
further suits in this Court arising out of the  
partition sale of her property in Lawrence county.  
That order was entered because of previous filings  
of Mrs Polyak against various persons in this Court,  
..... The order of November 13, 1985 was the third time Petitioner went to the U.S. District Court after being denied due process and deprivation of civil and constitutional rights in the State Court.

Judge Wiseman enclosed a copy of order of May 2, 1986, in which he closed cases and enjoined Petitioner from filing further cases in the District Court(App.Cp. 1)..Petitioner appealed this order closing cases and enjoining her from filing cases to the Court of Appeals. She thought she appealed order of November 13, 1985, but it appears Court

of Appeals disregarded Petitioner's appeal to Judge Wiseman's, District Judge, order enjoining him from filing further cases in District Court on November 13, 1985, No. 85-6134, and second order of May 2, 1986, No. 85-5536, in the dismissal in docket control. Case Supervisor did not send briefing schedule, but Petitioner submitted brief with motion against styling Case No. 85-5536. Petitioner has complained about clerks to the Honorable Pierce Lively Chief Justice, Court of Appeals. It appears case styled to render further complaints about property invalid in District Court.

Judge Wiseman issued order November 13, 1985 and stated in letter on April 30, 1986, that order was entered "because of previous filings of Mrs Polyak against various persons in this Court". Judge Wiseman presides in the division of the U.S. District Court located in the same building as the State Court in Columbia, Tennessee. Judge Hamilton hears cases in this building, William Boston Boston Bates & Holt, Thomas Stack Henry Henry & Stack (Buford Evans surveyed for Stack) are lawyers trying cases in the same building. It appears that Judge Wiseman is referring to U.S. Court, Columbia, Tennessee.

REASONS WHY WRIT SHOULD ISSUE

1. Petitioner has been denied due process in deprivation of civil constitutional laws and rights in all Courts, and does not have any other adequate means to attain hearing for relief.

The United States Court of Appeals affirms the dismissal of cases in the United States District Court in docket control denying due process in deprivation of civil and constitutional rights to retirement home denied in State Courts by dismissing No. 84-6090(D.C.1:84-0082), in which Petition for Removal was filed under 28 USC 1443. The United States Court of Appeals affirms the dismissal by the United States District Court of complaint grounded in constitutional right in kind and severally supported by Tennessee Statute No. 1:84-0083, (85-5032), and award of attorney fees and costs to Robert Boston, in which Petitioners objections were held by docket clerk resulting in Cases No. 85-5101 and 85-5147 at a cost to her of \$280.00. These cases were consolidated on Robert Boston's motion over pro se litigant's objections in appeal.

In Case No. 84-6090, Petitioner was subjected to a hearing in which she asked attorney Thomas Stack two times to reschedule due to acute illness

during a nationwide warning against heart patients being exposed to 102 degree heat-wave on July 29, 1983, in Columbia, Tennessee. She did not expect to go to hearing conducted by the Honorable Jim Hamilton while the jury was out on another trial, unprepared and ill while property ordered sold.

Petitioner confronted Thomas Stack with unfair and unjust hearing within three days on August 1, 1983, and demanded a New Trial. She confronted Judge Hamilton with unfair and unjust hearing and in deprivation of civil and constitutional rights on December 19, 1983. Petitioner demanded New Trial and Alteration or Amendment of Judgment to pay for restoration and maintenance of house for a retirement home since settlement by agreement in 1976. Judge Hamilton denied motions and instructed Petitioner to get appeal in within ninety(90)days But Judge Hamilton signed unappealable judgment prepared by Boston Bates & Holt, counsel for the plaintiff who divided loyalties after seven(7) years on December 20, 1983, and then signed order dismissing former attorney Thomas Stack Henry Hen & Stack, with Thomas Stack and William Boston, on January 10, 1984( App. A<sup>1</sup> p.11 ).

The Court of Appeals ruled judgment pro se litigant instructed to appeal on December 20, 1983, was unappealable on April 26, 1983, and issued another unappealable order, which appears to limit jurisdiction and prevent State Court proceeding being subjected to review by the Supreme Court.

A state court may not avoid deciding federal question and thus defeat jurisdiction of United States Supreme Court by putting forward nonfederal grounds of decision which are without any fair or substantial support. Wolfe v State of N.C., N.C. 1960, 80 SCT.1482, 364 US177.

The Court of Appeals ruled that property would have to be sold before review of lower Court proceedings. Application for Permission to Appeal was denied in the Supreme Court of Tennessee.

Petition to Remove this case to the United States District Court No.1:84-0082, under 28 USC1443 was dismissed and in United States Court of Appeal No. 84-6090 in docket control with 85/5101/5147.

Case No.1:84-0083(5032) was dismissed on Robert Boston's motion of res judicata in District Court and he was awarded attorney costs and fees in the amount of \$1,112.00. But order of April 26, 1974, is not a final appealable order, and dismissal as resjudicata does not conform to Supreme Court

law that only final judgment res judicata. The Court of Appeals of Tennessee dismissed appeal in order of April 26, 1983,"and it appearing that judgment from which appeal is sought is not a final judgment appealable as a right under TRAP Rule 3....

Supreme Court has stated is as "familiar law" that only final judgment is res judicata. G & Merrian Co. v Saafield, 1916 241 US 22 28 S Ct. 477 60 L Ed. 868.

The Court of Appeals consolidates Case No. 84-6090(D.C.1:84-0082) in which petition to remove grounded in denial of due process civil and constitutional rights by State Courts under 1443, and dismissed in the District Court with Appeal No. 85-5032/5101/5147(1:84-0083) filed under diversity of citizenship grounded in constitutional right of kind and severalty supported by Tennessee Statute dismissed in District Court and dismisses both appeals in docket control.

The Supreme Court of the United States has denied appeals in Cases No. 85-1975, 85-1991 and 86-35, and Petitions to Rehear on December 1, 1986. Petitioner has no adequate means to attain just compensation for investment of ten(10)years in retirement home or a New Trial for irreparable dan



2. The Petitioner is damaged in a way not correctable on appeal.

Petitioner's retirement home was ordered sold without any compensation for restoration including \$1200.00 for new roof and maintenance of ten(10) years since settlement by agreement in 1976, by Judge Hamilton on July 29, 1983. This order was prepared by attorney for the Plaintiff Boston Bates & Holt and signed by William Boston. It was signed by Thomas Stack Henry Henry & Stack over Petitioner's objections to lawyer and Judge Hamilton on October 19, 1983.

It is stated in this order that Petitioner pay one-third of all expenses incident to sale including attorney fees, and the costs of this case..

Petitioner has been sued by Buford Evans No. 1:85-0120(85-6135), for survey which was conducted without her knowledge or permission in addition to the above costs. Mr. Evans alleges that Thomas Stack retained for invalid survey of land. She finds a correlation between order prepared by William Boston Boston Bates & Holt and survey map of property.

Although Petitioner desires retirement home, she has learned that property located in a "hot

of potential development 32 miles south of the new "Saturn Plant" in Spring Hill, Tennessee. And she cannot ever realize any of the potential of her investment if property is sold. She understands that "land grabbing" is prevalent in this area.

Petitioner is damaged in a way not correctable on appeal as she does not have any means to attain appeal in the Courts of Tennessee. She has been denied a New Trial on December 19, 1983, (84-6090), and applications for permission to appeal. Petitioner was denied motion to forward records for appeal to the Court of Appeals in Tennessee, by Judge Hamilton on November 7, 1985. No. Evans 1:85-0120 (85-6134), before Petition to Remove under 1443.

The Rule 5(a) has been amended on August 15, 1984, in that a copy of the Notice of Appeal is not filed in the Court of Appeals. Petitioner has been informed by the legislature of Tennessee that amendment was approved. Petitioner believes that this amendment was used by Judge Hamilton to deny forwarding her records for appeal in Evans case which was properly before the Circuit Court of Lawrence County. She believes that amendment allows for discrimination against race, sex, non-resident



and pro se litigant. Petitioner has no means to attain appeal, and is damaged in a way not correctable on appeal in the State of Tennessee.

The Honorable Thomas A Wiseman enjoined Petitioner from filing further complaints against the sale of her property in the District Court on November 13, 1985, and again on May 2, 1986. She is damaged in a way not correctable on appeal in the United States District and Court of Appeals. Petitioner suffers irreparable damage in the sale of her property and the loss of a right to never be regained in her retirement home.

3. The district court's order is oft-repeated error and manifests persistent disregard of federal laws.

The Court of Appeals affirms the District Court's dismissal of related cases in disregard of federal laws. The District Court dismissed cases and disregards all motions submitted by pro se litigant.

Judge Wiseman dismissed Case No. 1:85-0116, Earlene Polyak v Jim Hamilton and the Circuit Court of Lawrence County, and enjoined Petitioner from filing further cases involving her property in the District Court in violation of 42 USC Sec.

1981, which denies her right to sue on November 1985, and again on May 2, 1986.

Judge Wiseman explains these orders in answer to Writ of Mandamus to act on motions, schedule Jury Trial No. 86-5460, Thomas Stack Henry Henry & Stack, and to file second complaint against William Boston Boston Bates & Holt No. 86-5462, on April 30, 1986. In the letter to John P. Hehman, Clerk of Court of Appeals, Judge Wiseman states order of November 13, 1985, "because of previous filings of Mrs Polyak against various persons in this Court...." It appears that Judge Wiseman is referring to various persons working in the State and division of the United States District Court where the Judge presides in Columbia, Tennessee.

Judge Wiseman disregarded the fact that the Complaint No. 1:85-0116, Jim Hamilton etc. was grounded in the denial of civil and constitutional rights and due process as secured by the Fifth and Fourteenth Amendment and denied complaint without hearing within five days on November 13, 1985. And to Complaint No 1:85-0116, w. joined Complaint No, 1:85-0120, Buford Evans ; No. 1:85-0125, Thomas Stack, Henry Henry & Stack; and

No. 3:85X-108, William Boston Boston Bates & Holt, which Judge Wiseman denied filing, under 28 USC 1441(c).

In Case No. 1:85-0116, Jim Hamilton and the Circuit Court of Lawrence County, Petitioner believes that she was denied due process in deprivation of civil and constitutional rights. She believes she was denied due process in obligation to go to trial to defend second forty(40) acres of Property after Circuit Court, Clerk Gerald Wilson demanded a copy of deed to appeal Buford Evans law suit. Petitioner did not expect to go to trial until March 1985, but Judge Hamilton ordered her to appear on December 26, 1986. She was again ill due to heart condition and acute bronchitis and submitted motion for a continuance with physicians statements and Affidavit. After repeated attempts to get continuance to get better she submitted motion for Judge Hamilton to disqualify himself. Judge Hamilton denied motions at trial and Petitioner stated cruel and unusual punishment in violation of Eight Amendment.

When Petitioner tried to appeal unfair and unjust judgment in which former attorney, Thomas

Stack testified and submitted confidential information against her. Judge Hamilton denied motion to forward records in Evans Case on November 7, 1985. Judge Wiseman dismissed No. 1:85-0116, and the Court of Appeals affirmed in another dismissal in docket control.

Judge Wiseman found allegations of nefilence and malfesance to merit filing complaint No.1:85-0125. Thomas Stack Henry Henry & Stack in the District Court, but disregarded all motions to schedule jury trial including Writ of Mandamus No.86-5460. The Court of Appeals dismissed writ.

Claim of lack of assistance of trial counsel presented important constitutional question warranting granting of certiorari. Canley v Cochran, Fla.1962 82 S Ct. US 506

Judge Wiseman dismissed Case No.1:85-0120, Buford Evans and remanded back to State Court. But Petitioner found that remand could be appealed under 28 USC 1443 No.85-6135. The Court of Appeal dismissed without allowing brief after conversation between Ms. Yvonne Henderson and Mr. Evans lawyer Larry Brandon, but petitioner allowed rehear, which resulted in another dismissal in docket control.

Judge Wiseman dismissed Case No.3:85X-108 William Boston Boston Bates & Holt without allowing

filing. A second complaint followed by Writ of Mandamus No. 86-5462, brought about a second order enjoining Petitioner from filing further cases in the District Court and closing all of the above cases. The District Court styled appeal as if Petitioner had filed complaint against these parties when she was appealing closing of case and enjoin.

Petitioner appealed Judge Wiseman's order enjoining her from filing cases and closing cases No. 86-5536. The Court of Appeals supports the District Court's style and dismissed appeal. She does not have any adequate means to attain relief from the irreparable damage of the sale of her property without any compensation and the loss of a right to never be regained in her retirement home.

#### CONCLUSION

Petitioner prays that a common-law writ of certiorari issue to review this cause in which relief is not available in any Court and cannot be had through the appellate process. She prays for the award of her retirement home in kind and

severalty, and in the alternative she requests that she be granted her civil and constitutional right of due process in a New Trial. The sale of Petitioner's property without any compensation is an irreparable damage and the loss of a right to never be regained in her retirement home.

On the 17<sup>th</sup> day of December, 1986.

Respectfully submitted,

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or-  
4063 Hood Road  
Lake Park, Florida 33418  
(305) 627-3564

Certificate of Service

I certify that a true and exact copy of this pleading has been mailed First Class Postage to Robert Boston, 2100 One Commerce Place, Nashville, Tennessee 37219, and all parties interested in this cause.

*Carlene Poljak*

STATE OF FLORIDA  
PALM BEACH COUNTY

I certify that the above information is true and correct to the best of my knowledge.

*Ruth Anne Ferg*  
Ruth Anne Ferg  
Notary Public

*Carlene Poljak*

My comission expires \_\_\_\_\_

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. DEC 31, 1988  
BONDED THRU GENERAL INS. UND.



SUPREME COURT OF THE UNITED STATES

RE:  
EARLENE POLYAK  
Petitioner

VS

FRANK HULEN AND  
WILMA LESNANSKY

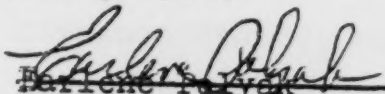
AFFIDAVIT

Petitioner Earlene Polyak, deposes and says:

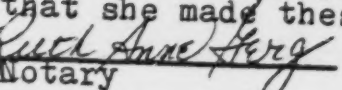
That she did not receive certificate of service on costs and attorney fees submitted by Robert Boston in the above named case.

That she believes she has been subjected to undue local influence and prejudice in this and related cases in denial of due process and deprivation of civil and constitutional rights, which may merit a review of the proceedings of the lower courts and a New Trial.

On the 17<sup>th</sup> day of December, 1986.

  
~~Earlene Polyak~~  
3179 Middlefield Drive  
Trenton, Michigan 48183  
(313) 676-3364 -or-  
4063 Hood Road  
Lake Park, Florida 33418  
(305) 627-3564

STATE OF FLORIDA  
COUNTY PALM BEACH

Earlene Polyak appeared before me and affirmed that she made these statements by her own will.  
  
Notary My commission expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. DEC 31, 1988  
BONDED THRU GENERAL INS. UND.





## APPENDIX A

In the Chancery Court of Lawrence County,  
Lawrenceburg, Tennessee.

Frank Hulen and Wilma Lesnansky, Plaintiff v.  
Earlene Polyak, Defendant. Frank Hulen is 74 years  
Earlene Polyak 64, and Wilma Lesnansky 62, years  
of age.

Complaint and restraining order against  
finishing seven year restoration of forty-five(45)  
year old for retirement home to move to Tennessee  
was served on Appellant on April 19, 1983.

Complaint was served on Appellant on property  
near Lawrenceburg, while she is a resident of  
Michigan, which renders complaint invalid by  
Tennessee law. Chancery Court Case No. 1974.

Hearing held in Columbia, and in Maury County,  
when complaint entered in Lawrence County, and  
against Tennessee law that hearing be held in  
county complaint entered on July 29, 1983.

Presiding: The Honorable Jim Hamilton. Judge  
Hamilton held hearing while jury was out on another  
trial, and issued verbal order to sell within two  
hours when attorney for the defense started to  
give summary. Judge Hamilton allowed memorandum brief.

STATEMENT OF THE CASE

Within one week after Mrs. Rena Hulen's death, Plaintiff's initiated settlement by agreement of forty (40) acres with Frank Hulen adding back a strip of acreage to his farm, Wilma Lesnansky getting acreage to the east of the house, as her son wanted to build home, and Appellant was to get forty-six (46) year old house with roof fixed in, and acreage in front of house, about six (6) ten (10) acres. As a result of this agreement in January, 1976, Appellant and her husband Alex Polyak traveled to the farm at least twice each year to prepare old house for a retirement home. This restoration was especially difficult for Polyak as he is a World War II veteran with an artificial limb. The restoration included, but not excluded to, new roof costing over \$1200.00, painting wood and restoring cement blocks, electrical repairs, telephone installation, termite control insurance, and repairs too numerous to mention. A trailer was pulled from Michigan to haul away large underbrush and rubbish. Plaintiff's were present, but did not help, or invest any money

In 1982, Frank Hulen stated that he wanted the property sold so his kids could buy it, and he, and Wilma Lesnansky conspired to sell property without offering any compensation for Appellant's investment. They retained William Boston, Boston, Bates & Holt, who had represented the family since 1976, and this law firm divided loyalties and sued for sale. Property is usually sold at Public Auction in Court ordered sales.

Appellant does not have any knowledge of law or expertise in the legal profession, but she relieved the first attorney, Mr. Lee England after he asked whether she wanted a private or public sale. Mr. England had promised to defend Appellant's investment and the settlement by agreement in 1976.

Mr. Thomas Stack, Henry Henry & Stack was retained after he promised to defend settlement by agreement and investment in retirement home. He cashed \$1500.00 check enclosed with letter stating, "it is understood that if we are not successful in Lawrenceburg we will appeal to a higher Court. Mr. Stack promised that his work would merit appeal. He stated he needed \$1500.00 to go against friends.

SUMMARY

Appellant suffers from open-heart surgery and resulting complications which results in sensitivity to temperatures, and she became ill during July 1983, during a nationwide warning for heart patients to stay out of the heat wave. She asked Mr. Stack for hearing to be rescheduled due to 102 degree heat wave in Tennessee, but stated that Mr. William Boston absolutely refused. Appellant was obligated to travel in heat wave to try to defend her right to her property. After exposure to this intense heat her condition became more severe and she required Oxygen, but Mr. Stack again refused to reschedule hearing on July 29, 1983. She objected twice since not a

After Judge Hamilton ordered the property sold, Mr. Stack asked to submit a memorandum and it was allowed. Mr. Stack retained the services of Mr. Buford Evans, Real Estate Auctioneer to survey Appellant's property without her permission or knowledge, and she believes that the map is an invalid representation of her property. The Memorandum Brief is as follows:

IN THE CHANCERY COURT  
FOR  
LAWRENCE COUNTY, TENNESSEE

FRANK HULEN AND  
WILMA LESNANSKY

Plaintiffs

VS

No. 1974

EARLENE POLYAK

Defendant

MEMORANDUM BRIEF

On July, 29, 1983, a hearing was held in the above styled cause before the Honorable Jim T. Hamilton, by consent of all parties and their counsel, at Columbia, Tennessee.

The issue: in the case raised by the parties pleadings were:

(1) Whether the subject property can be partitioned in kind or, alternatively, whether it is manifestly to the advantage of the parties that it be sold for a partition or so situated that it is not feasible or practical to divide in kind.

(2) Whether there has been a parole partition of this property in kind in reliance upon which Defendant has made substantial improvements on the house situated on the subject property.

This action is governed partly by the provision of Statute at TCA 29-27-201, et seq. It is also governed by a substantial body of case law, pertinent portions of which will be cited herinafter.

PARTITION IN KIND IS FAVORED OVER SALE FOR PARTITION

The party insisting on a sale must show clearly by the facts the necessity for such sale, and nothing short of the clearest and most satisfactory proof could justify the Court in ordering a sale against the protest of one(1) of the tenants in common.

Reeves v. Reeves, 58. Tenn 669, Vanderburg v. Molder, 4 Tenn. Civ. App. (4 Higgins) III

Partition in kind at the common law was a matter of absolute right. Sale may not be ordered without good cause being shown. The applicant for sale need show the existence of such a state of facts as, like the statute, will be sufficient to rebut the presumption of law that each of the parties is entitled to an actual partition. The onus is always on he who seeks a sale.

Bevins vs. George, 255 S.W. 2d 409

### BURDEN OF PROOF

The burden of proof where a party petitions for sale for partition clerly rests heavily on that party.

The mere opinion of a witness without facts sustaining it that the property can not be partitioned and must be sold is insufficient. A sale for partition based thereon will be held utterly void.

Davidson vs. Bowden, 37 Tenn. 129

Ross vs. Ramsey, 40 Tenn. 15

Again, nothing short of the clearest and most satisfactory proof could justify the Court in ordering a sale against the protest of one(1) of the tenants in common.

Reeves vs. Reeves, 58 Tenn. 669

Vandenburg vs. Molder supra:

Glen vs. Gresham, 602 S.W. 2d 256

### PARTITION IN KIND IS A SEPARATION BETWEEN CO-TENANTS

It is not a conveyance and, therefore, not governed by the statute of frauds. An agreement for partition between co-tenants may be proved by oral evidence.

Fisher vs. Loague, 3 Tenn. Cas. (Shannon)

Meachum vs. Meachum, 19 S.W. 757 91 Tenn. 53

McBroom vs. Whitefield, 108 Tenn. 422

McCaulty vs Peoples, 4 Tenn. App. 448

Where on tenant in common, at his own expense puts improvements on the common property, and a partition in kind is made, such improvements should be allotted to the share of the party making them, and without any charge for their value.

Polk vs. Gunther, 107 Tenn. 16

Broyles vs. Waddell, 58 Tenn 32



The cost of the improvements made can be allowed to such a co-tenant; that co-tenant is not merely limited to the amount by which those improvements have increased the value of the property.

Wilburn vs. Kingsly, 3 Tenn. App. 88

If exact partition can not be made without material injury to the parties, or some one of them (the Commissioners), may make partition as nearly equal as they can and charge the larger shares with the sums necessary to equalize all shares, and report the facts.

T.C.A. 29-27-549

Hardin vs. Cogwell, 52 Tenn 549

Burdett vs. Norwood, Tenn. 491

### COURT HAS GENERAL AND EQUITABLE POWERS

A Court of equity in a partition case does not merely in a ministerial capacity, but founds itself on general principles of equity according to its own notion of equal justice and equity between the parties. It will, by its decree, adjust allequitable rights of the parties interested.

Sproles vs. Gray, 296 S.W. 2d 839

### PROOF IN CASE

No summary will be made of the proof adduced at trial. The Court has its own notes and recollection of what was established by both sides at this hearing. The Court will rely upon these facts and the application of the above-cited law thereto.

Respectfully submitted,

HENRY HENRY & STACK

By Thomas Stack (signed)

Thomas J Stack

Attorney for Defendant

Earline Polyak

The memorandum for the order was

William Boston on August 11, 1983,

order by Mr. Boston after 54 days is as follows:



CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN ET AL

Plaintiffs

VS

NO. 1974

EARLENE POLYAK

Defendant

MOTION FOR NEW TRIAL  
OR FOR ALTERATION AND  
AMENDMENT OF JUDGMENT

Now comes Defendant, Earlene Polyak, pursuant Rule 59, T.R.C.P., and respectfully moves that the Honorable Court grant a new trial of these proceedings or in the alternative that the order previously entered herein be modified in certain respects as set out below:

1. The motion for new trial is predicated on (a) the failure of plaintiff to meet their burden of proof by showing with clear and satisfactory proof that the subject premises are not susceptible of division or partition in kind: (b) the fact that preponderance of the proof particularly the testimony of Buford Evans, suggested that the premises can be partitioned in kind and the Court's ruling is contrary to said weight of evidence.

2. The alternative motion for alteration and amendment of the order previously entered is predicated on the failure of the Court to award to Defendant from the proceeds of the partition sale ordered the sum of 1,600.00 that being the amount spent by Defendant on refurbishing the house as shown by her uncontroverted testimony at trial.

HENRY HENRY & STACK  
BY signed by  
Thomas Stack

Appellant had suspected from some time that Mr. Stack was not representing her best interest, and objected as she has many more bills and the

amount of money he asked for in the motion for alteration and amendment of judgment would hardly cover the new roof. He stated that he did not believe that Judge Hamilton would award Appellant any money. She learned on November 7, that order to sell property had been entered on October 19, 1983, and only a few days left to appeal. Appellant suspected that the map would be used to sell the property as it is the custom to divide property then sell for the higher price at Public Auction. When Mr. Stack ignored additional bills for the second time, she relieved him of his services and assumed her case on December 19, 1983.

Appellant believes that she first raised the constitutional question that she was being deprived of her property interest without due process and just compensation when she confronted Mr. Stack within three days after the hearing with an unfair and unjust hearing and demanded a New Trial.

Appellant confronted Judge Hamilton with an unjust and unfair hearing and asked for a new trial based on (1) she was taken across county lines for hearing in Maury County, when complaint entered in Lawrence County and against Tennessee law; (2)

Plaintiff Wilma Lesnansky did not come to hearing or testify and valuable evidence about the settlement by agreement, was withheld in her testimony; (3) Alex Polyak did not testify. He was present when division lines were being drawn; (4) Appellant was obligated to attend hearing while desperately ill due to heat wave, which a nationwide warning to heart patients was in effect; (5) Appellant's case was not given adequate time and consideration due to being held while the jury was out on another trial.

Appellant predicated her argument for amendment or alteration of previous judgment on the Court's failure to award her any monies for the restoration and maintenance of the property for seven (7) years out of the proceeds before any distribution of the money from the sale of the property. Judge Hamilton verbally denied motions and instructed William Boston to prepare the judgment and instructed Appellant to get her appeal in within ninety (90) days. Judge Hamilton stated that the Court would prepare a release from the defense of Appellant, but she found and order prepared without her knowledge in his records. This hearing resulted in judgment and order.

JUDGMENT

This cause came on to be heard on the 19th day of December, 1983, before the Honorable Jim T. Hamilton, Judge, upon motion this day filed by defendant, personally in her own behalf, Statement and argument of the Defendant, Earlene Polyak, in her own behalf, from all of which the Court finds no merit, and said motion is here and now overruled in its entirety. Judgment is signed by Charles Holt, Boston, Bates & Holt and Judge Hamilton and entered December 20, 1983

ORDER

This cause came to be heard on this the 19th day of December, 1983, before the Honorable Jim T. Hamilton, Judge Part II of the Circuit and Chancery Courts of Lawrence County, Tennessee, on the Motion for a New Trial or for Alteration or amendment of judgment of the order previously filed herein by the Defendant, Earlene Polyak by and through her counsel of record, Henry Henry & Stack, and upon the oral motion of said Earlene Polyak to be allowed to represent pro se, and that Henry Henry & Stack be relieved as counsel and further aforementioned Motion not be heard in this Court IT IS THEREFORE ORDERED are relieved as counsel in this cause and that aforementioned Motion for a New Trial etc, be and hereby dismissed. This order was signed by Thomas Stack, William Boston and Judge Hamilton and entered January 10, 1984.

The Notice of Appeal was mailed to the Chancery Court of Lawrence County on December 30, 1983, and a copy was mailed the the Court of Appeals in Nashville, Tennessee.

On July 26, 1984, Mr. Evans filed a complaint against Appellant in the Circuit Court of Lawrence County, Case No. 10647, Buford Evans v. Earlene Polyak

APPENDIX B

In the Court of Appeals and Supreme Court of Tennessee, Middle Section at Nashville.

Frank Hulen and Wilma Lesnansky, Plaintiff-Appellee v. Earlene Polyak, Defendant-Appellant.

Civil Action No. 83-405-II

Filed: Main Brief on February 22, 1984

Dismissed: April 26, 1984

Presiding in the Court of Appeals:

Judge Henry F. Todd P.J., Judge Samuel Lewis, Judge Ben Cantrell, and Judge Lewis H. Conner, Jr.

This appeal is from the Chancery Court, Lawrence County, Tennessee, from the order to sell Appellant's retirement home without just compensation entered on October 19, 1983, and denial of a New Trial, and for Alteration or Amendment of Judgment to allow just compensation for restoration of home entered December 20, 1983.

Presiding: The Honorable Jim T. Hamilton at both hearings.

Notice of Appeal filed: January 3, 1984, in the Chancery Court, and copy filed on January 4, 1984, in the Court of Appeals.

Technical Record filed: January 20, 1984, and



SUMMARY

Appellant grounded this appeal in her belief that the order to sell her retirement home verbally issued on July 19, 1983, and followed by entering on October 19, 1983, unconstitutionally deprived of her property without due process and just compensation for restoration of house and seven(7) years maintenance. Petitioner stated that s.e had been subjected to unjust and unfair hearing within three days and asked Mr. Stack for a New Trial. Appellant stated that she had been subjected to an unfair and unjust on December 19, 1983. Judge Hamilton instructed her to get her appeal in within ninety(90) days and instructed William to prepare the judgment. Notice of Appeal was received in the Chancery Court of Lawrence County on January 3, 1983.

The Trial Clerk filed the Technical Record within 19 days on January 20, 1983, as follows:

STATE OF TENNESSEE  
COURT OF APPEALS

FRANK HULEN & WILMA  
LESNANSKY vs.

EARLINE POLYAK

Nashville, Jan. 20, 1984

DOCKETED AS APPEAL NO: 83-405-II

RECORD FILED TODAY IN THE COURT OF APPEALS  
EXPECTED ARGUMENT SESSION: APRIL 30-MAY 4, 1984

Ramsey Leathers, Clerk

After the Trial Clerk filed the technical record seventeen days after the notice of appeal case was suddenly dismissed, but Appellant was allowed to submit brief on technicalities after petition to rehear was allowed by the Court of Appeals.

It was decided that she should have appealed the order entered by Mr. Stack on January 10, 1984, without her knowledge, instead of the judgment entered by William Boston on December 20, 1983. This unappealable was entered after Judge Hamilton instructed Appellant to appeal it on December 19, 1983.

Appellant submitted timely brief on February 23, 1984, and Statement of Evidence on March 2, 1984, but appeal was never heard, and case was dismissed on April 26, 1984. The pertinent part of the decision is as follows:

And it appearing from the record that appellant's motion to alter and amend was heard on December 19, 1983, that on January 3, 1984, appellant filed a notice of appeal "from the final judgment entered on December 20, 1983, but the order overruling appellant's motion to alter of amend was not entered until January 10, 1984.

... and it appearing that the judgment from which appeal was sought is not a final judgment appealable as a right under TRAP Rule 3 in that said judgment orders the sale of property but does not confirm any sales or transfe



title.

IT IS THEREFORE ORDERED that this appeal be and hereby dismissed at the cost to the appellant without prejudice to review of any and all actions of the Trial court by appeal prosecuted from final judgment.

On August 15, 1984, the TRAP amended Rule 5(a) deleting the requirement that a copy of the notice of appeal be filed with the clerk of the Court of Appeals. Appellant believes that this rule allows for discrimination as to who is allowed to appeal. Judge Hamilton denied Appellant's motion to forward records of Case No 10647, on December 7, 1985. She believes that pro se litigant is not allowed appeal as a right.

Judge Hamilton disregarded all of Appellant's motions, petitions and requests in an attempt to correct the record, and defend herself in the Chancery and Circuit Court of Lawrence County.

Appellant believes that she had a valid argument as TRAP Rule 4(d) a notice of appeal filed before the entry of the judgment shall be treated as filed after such entry and on the day thereof, and (d) establishes the general principle that a right of appeal is not lost by filing the notice of appeal before judgment appealed.

APPENDIX C

In the United States District Court of the Middle District of Tennessee.

Frank Hulen and Wilma Lesnansky, Plaintiff  
Earlene Polyak Defendant. Case No. 1:84-0082.

Filed: October 1, 1984.

Presiding: Thomas Wiseman Jr, Chief Judge.

Appealed to the United States Court of Appeals for the Sixth circuit on November 6, 1984.

SUMMARY

The District court dismissed the petition for failure to state a claim on which relief can be granted. Appellant's request for oral argument and jury trial denied. Attorney costs and fees denied.

It was Appellant's understanding that Court be petitioned after telephone conversation with Judge Wiseman about problems with attorneys.

Appellant grounded her petition on the basis that she was being denied by State Courts rights secured for civil and Constitutional laws by the constitution.

Appellant noticed that all applications denied around holidays PER CURIAM, It appears docket con

SUPREME COURT

In the Supreme Court of Tennessee, Middle  
Division, this case same No. 83-405-II.

Application for permission to appeal submitted  
May 17, 1984, and denied on July 2, 1984.

Petition to rehear denial of application for  
permission to appeal to the Supreme Court denied.  
A motion to permit second petition to rehear  
filed on September 4, 1984, and denied on  
October 1, 1984.

Presiding: William Foner, Chief Judge, Ray  
Black, Robert Cooper, Frank Drovota, and William  
Harrison.

SUMMARY

IN the application for permission to appeal  
Allant stated that she was being civil and  
Constitutional rights and due process to defend her  
right to her property, and requested the supervisory  
power of the Court. She submitted motion to relieve  
the judgment and order to allow appeal  
pursuant to TRCP 60.02 as judgment prepared by  
opposing party Boston Bates & Holt. And "Trial Judge  
decision not conclusive on appellate Court. Citizens  
National Bank etc. v Witherspoon, 127 Tenn 363 (1912).

APPENDIX D

In the United States District Court, Middle District of Tennessee.

Earlene Polyak Plaintiff v. Frank Hulen and Wilma Lesnansky, Defendants.

Case No. 1:83-0083

Filed: November 18, 1984.

Dismissed: December 3, 1984.

Petition to Rehear and Deny Attorney Costs and fees denied December 12, 1984, Case No 2.

Motion to Strike Defendant's motion to dismiss denied, this matter has been appealed. this Court does not have jurisdiction." Case No. 3, on February 4, 1985. Deputy Clerk held motion to force appeal untill Appellant forced to appeal attorney costs and fees then put motion in on February 4, 1984. Appellant called Court many ti

Presiding: Thomas A. Wiseman Jr. Chief Judge

Appealed to the United States court of Appeals

SUMMARY

This complaint was submitted under diversity of citizenship. Appellant asked that she be awarded her inherited and settlement by agreement right to retirement home she had restored and

maintained since 1976. She described the division of 1976, in which Frank Hulen would add the back acreage to this farm, Wilma Lesnansky was to get the acreage to the east of the farm and Appellant was to get 46 year old house and acreage in front, to compensate for their additional acreage. Land was valued at \$1000.00 per acre at that time. It is not of much value now, and the restored house has increased in value due to cost of building.

Appellant did ask for restraining order as tobacco allotment had been taken from farm, antique furniture, and crop land was being ditched and damaged. Request for oral argument and jury trial ignored.

This case was dismissed on Edward Boston's motion to dismiss within three weeks. Local attorney Edward Boston was awarded costs and fees. These services were composed mainly of long distance telephone calls to William Boston. Edward Boston wrote unfavorable letter to Judge Wiseman during Case No. 1:84-0082, which she believes prejudiced the Court. William Boston wrote unfavorable letter about Appellant, which he admitted that he sent to attorneys inquiring about her case. Appellant believes local prejudice and influence.

APPENDIX E

In the United States Court of Appeals for the Sixth Circuit.

Earlene Polyak Plaintiff-Appellant v Frank Hulen and Wilma Lesnansky, Defendant-Appellees.

Case Nos. 85-5032/5101/5147, D.C. No. 1:84-0

Consolidated on appeal over Appellant's objections on motion by Edward Boston on March 1 1985 with:

Frank Hulen and Wilma Lesnansky Plaintiff-Appellee v Earlene Polyak Defendant-Appellant Case No. 84-6090, D.C. No. 1:84-0082. Chancery Court Case No 1974, Court of Appeals and Supreme Court of Tennessee Case No. 83-405-II.

Filed: December 17, 1985, Extended appeal to February 13, 1986.

Rehear denied on February 13, 1986.

Appeal from the United States District Court Middle District of Tennessee.

Presiding: Thomas A. Wiseman Jr.,

Before: KENNEDY AND KRUPANSKY, Circuit Judge and SUHRHEINRICH, District Judge.



SUMMARY

The Court of Appeals disregarded civil and constitutional rights and dismissed cases without allowing oral argument. Appellant's request for just compensation was identified as injunctive relief and denied. Edward Boston was awarded costs and attorney fees. He was later allowed to enter costs without serving Appellant. All attempts to call mandate to allow for objection to costs and attorney fees have been disregarded as all motions. It appears cases reviewed to award attorney fees and costs as these items are mentioned ten(10) times in decisions.

The District court and court of appeals has full jurisdiction in Case No 5032 filed under diversity of citizenship and amount exceeds \$10,000.

Case No. 84-6090, was removed by petition on grounds that Appellant had been denied by State Court her rights as secured by the laws providing for civil and constitutional rights by the Fifth and Fourteenth Amendments, diversity of citizenship, and amount over \$10,000. Although case removed Federal Courts have jurisdiction and has power to waive any requirements under 60.(b)FRCP,"for



intentional interference with inheritance". De Wit v. Duce, 1979 CAS Fla) 599 F 2d 676. And Federal Court has power to hear claims that would not be independently removable." Watkins v Grover (1974 CA-9 Cal 508 Fed 920. "... federal courts do have jurisdiction to entertain suits in favor of ... heirs.. to establish claims". Markham v. Allen, (1946) 326 US 490. And ... federal court may have personam and subject matter jurisdiction of rival claims and adjudicate between them. Rousseau v US Trust Co., 1976 DUNY) 422 Supp. 447. And.... federal court enters judgment... not whether case properly removed, but whether federal district Court had original jurisdiction had it been filed in that court. Grubbs v Gen. Electric Corp., 1978 405 US 699.

Appellant submitted notice of appeal and it was timely received by the Court of Appeals on March 17, 1986. The Supervisor returned appeal, but then allowed it to be returned to the Court. Appellant does not have any knowledge or expertise in law, and does not understand the rules of appeal, and she is at the mercy of the Supreme Court.

Filed Feb. 13, 1986 John P. Hehman, Clerk

Frank Hulen and Wilma Lesnansky,

Plaintiffs-Appellees (84-6090),  
Defendants-Appellees (85-5032/  
5101/5147).

v.

EARLENE POLYAK.

Defendant- Appellant (84-6090),  
Plaintiff-Appellant (85-5032/  
5101/5147)

## O R D E R

BEFORE: ENGEL and KRUPANSKY, Circuit Judges, and  
SUHRHEINRICH\* United States District Judge

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original Submission and decision of the case. Accordingly, the petition is denied.

ENTIRED BY ORDER OF  
COURT

Signed John P. Hehman

EXTENSION OF TIME

An extension of time was granted through June 13, 1986, and appeal is timely submitted to the Supreme Court of the United States.

*John P. Hehman*

TENNESSEE STATUTE

29-27-17. If exact partition cannot be made ...they may make the partition as nearly equal and charge the larger shares with sum necessary to equalize shares TCA 1932.

And

The court may...in accordance with the wish of one of the cotenants, order an allotment of shares ... in kind and severalty and direct the sale of the other portion if it is not susceptible to partition in kind.

Vandenburg v Molder, 4 Tenn. Civ. App Higgin  
111 1913

No. 85-5101

No. 85-5147

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

FILED DEC 17, 1986 John P. Hehman, Clerk

EARLENE POLYAK,

Plaintiff-Appellant,

v.

FRANK HULEN AND  
WILMA LESNANSKY,

Defendants-Appellees

ORDER

NOT RECOMMENDED  
FOR FULL-TEXT  
PUBLICATION

BEFORE: KENNEDY and KRUPANSKY, Circuit Judges;  
and SUHRHEIBNICH, District Judge\*

In these two appeals, a Michigan pro se plaintiff attempts to appeal from a district court order setting an amount of costs and attorney fees awarded to the defendants under Rule 11, Federal Rules of Civil Procedure. The determination that plaintiff should be liable for the costs and attorney fees has already been reviewed by this Court in case no. 85-5032, and that determination is not again before us in these appeals. For the reasons which follow, the Court concludes that the amount of the costs and fees is proper and reasonable under the circumstances of this case.

Initially, it is apparent that this Court lacks jurisdiction over the appeal docketed under case no. 85-5101 because plaintiff's notice of appeal was filed during the pendency of her timely motion to dismiss the order setting the of costs and fees. Since the motion to dismiss challenged the correctness of the order, it is construed as a timetolling motion to alter or a authorized under Rule 59(e), Federal Rules of Civil Procedure. Miller v. Leavenworth-Jeffers Elec. Co-op., 653 F.2d 1378, 1380 (10th Cir. 1981); Dove v. Codesco, 569 F.2d 807, 809 (4th Cir. 1978); Theodoropoulos v. Thompson-Starrett Co., 418 F.2d 350, 353 (2d Cir. 1969). Since plaintiff's notice of appeal was Fire and Casualty Co., 685 F.2d 124, 127 (5th Cir. 1982) (per curiam); Wilkins v. Rogers, 581 F. 2d 399, 403 (4th Cir. (per curiam)).

To the extent the appellant may have sought removal of her suit under 28 U.S.C. 1443 as one claiming civil rights violations, the dismissal by the district court was nonetheless proper for several reasons. Even as an attempted removal under 1443, the petition was properly denied a

untimely under 28 U.S.C. 1446(b) as the petition was filed well beyond thirty days after the appellant first received notice of the initial pleading in the state trial court. In addition, the petition was properly denied because the appellant clearly failed to meet the two-prong test for removal of a civil rights case under 1443. Johnson v. Mississippi, 421 U.S. 213, 222 (1975); Smith v. Winter, 717 F.2d 191, 194 (5th Cir. 1983). The appellant has not asserted any claim of racial inequality, and while she claims the state courts denied her various and sundry constitutional claims, the denial is not asserted to have been pursuant to an expressed state law, but rather largely due to ineffective assistance of counsel. In addition, the appellant could not have achieved removal under 1443(2) as neither of the defendants are state or federal officials, nor are they alleged to have assisted such persons in the performance of their official duties, nor are they alleged to have assisted such persons in the performance of their official duties. Detroit Police Lts. and Sgts. Ass'n v. City of Detroit, supra, 597 F.2d at 568.



The petition for removal, accordingly, was properly denied by the district court.

The District court's judgment under review in 85-5032 was also properly entered dismissing plaintiff's suit for being barred by the state court judgment under the doctrine of res judicata. The court also properly granted the defendants costs and attorney fees. Tennessee courts have held that if a second lawsuit involves the same parties acting in the same capacities and touches the same subject matter as the first lawsuit, the principles of res judicata apply. National Cordova Corp. v. City of Memphis, 214 Tenn. 371, 380 S.W.2d 793, 798 (1964); Grange Mutual Casualty Co. v. Walker, 652 S.W.2d 908, 909-10 (Tenn. App. 1983). Under Tennessee law, the doctrine of res judicata applies to the sale of her property. The district court dismissed the suit for being barred under the doctrine of res judicata. It also granted the defendants costs and attorney fees. The appellant appeals from this judgment in case no. 85-5032. In both of the cases, the appellant now requests the Court to enjoin the sale of her property.



Upon consideration of all the arguments presented by the parties in their respective appellate briefs, this Court Concludes that it must dismiss in part the appellant's appeal filed under 84-6090 for lack of jurisdiction and yet also affirm the district court's judgment to the extent it is reviewable. The district court's judgment under review in 85-5032 shall also be affirmed and the motion for injunctive relief shall be denied in both cases. Because the Court likewise finds the assertion of the arguments presented by the appellant in these cases to be absolutely frivolous, costs and attorney fees will be awarded against the appellant pursuant to Rule 38, Federal Rules of Appellate Procedure.

This Court lacks jurisdiction to entertain the appellant's appeal in case no. 84-6090 to the extent appellant seeks review of the district court's judgment dismissing her petition for removal filed under 28 U.S.C. 1441 or 1442. If a case is determined to have been removed improvidently and without jurisdiction under 28 U.S.C. 1447(c), then pursuant to 28 U.S.C. 1447(d), the order of

dismissal and remand shall not be reviewable in the court of appeals unless the removal was sought in a civil rights case under 28 U.S.C. 1443. Gravitt v. Southwestern Bell Telephone Co., 430 F.2d 723 (1977); In re Romulus Community Schools, 729 F.2d 431 (6th Cir. 1984); Detroit Police Lts. and Sgts. Ass'n v. City of Detroit, 597 F.2d 566, 567 (6th Cir. 1979) (per Curiam). To the extent appellant sought removal under 1441 or 1442, therefore, this appeal must be dismissed because a dismissal of a petition for removal for being untimely is denial within the meaning of 1447(c) is hence unreviewable under 1447(d). Lewis v. Louisville & Nashville R. Co., 758 F.2d 219, 222 (7th Cir. 1985); Royal v. State Farm will bar consideration of all claims which were or reasonably could have been litigated by the parties in the court action. American National Bank & Trust Co. v. Clark, 586 S.W.2d 825, 826-27 (Tenn. 1979); National Cordova Corp. v. City of Memphis, supra 380 S.W. 2d at 798. Accordingly, it is clear that the appellant's federal lawsuit was barred as she sought to relitigate issues which were an

could have been fairly litigated in the previous state court action. The issues and parties are identical in both suits; and, in addition, real estate and probate are peculiarly within the knowledge and expertise of the local state courts. Policy considerations, therefore, likewise support the application of res judicata in this case.

The district court also properly found the plaintiff liable for costs and attorney fees, pursuant to Rule 11, Federal Rules of Civil Procedure. Plaintiff unequivocally knew that a court of competent jurisdiction had already entertained litigation involving the identical subject matter, issues and parties. She had also already sought appellate review in the state courts and she had also tried to present her claims in a federal forum by filing a petition to remove. Under these circumstances, it is reasonable to conclude that this appellant did not have a good faith belief that her suit was well founded, as a prefiling inquiry into her own history of litigation would have shown her otherwise. The district court, therefore, did not abuse its discretion in

policy considerations support rather than detract from the application of res judicata to bar her present suit filed pro se.

For these reasons, this panel unanimously agrees that oral argument is not necessary in this appeal. Rule 34(a), Federal Rules of Appellate Procedure. The appeal under review is 84-6090 is, accordingly, dismissed to the extent the appellant sought review of the denial of her petition to remove a non-civil rights case pursuant to Rule 9(d)(1), Rules of the Sixth Circuit. The district court's judgment under review in this case is, however, affirmed to the extent the appellant sought to remove a civil rights case, however, affirmed to the extent the appellant sought to remove a civil rights case pursuant to Rule 9(d)(3), Rules of the Sixth Circuit. The appellant's motion for injunctive relief is hereby denied and costs and attorney fees are also hereby awarded against the appellant pursuant to the cited authority and Rule 38, Federal Rules of Appellate Procedure. The appellees ma

assessing costs and attorney fees against this plaintiff. See In re TCI Ltd., 769 F.2d 441, 446 & 447 (7th Cir. 1985); Eastway Construction Corp. v. City of New York, 762 F.2d 243, 253-54 (2d Cir. 1985); Committee Notes to the 1983 Amendment to Rule 11, Federal Rules of Civil Procedure.

Finally, this Court concludes that costs and attorney fees must be assessed against the appellant for bringing these appeals as her arguments are frivolous and completely without merit. Rule 38, Federal Rules of Appellate Procedure  
Reynolds v. Humko Products, 756 F.2d 469, 473-74 (6th Cir. 1985); TIF Instruments, Inc. v. Colette, 713 F.2d 197, 201 (6th Cir. 1983). The appellant's attempts to distinguish her suit from the state court action and hence avoid the application of res judicata are totally inconsequential. Despite her having counsel represent her in state court, the plaintiff was still sued in the same capacity and character as she now seeks to sue her siblings as an individual and not as a representative of a third party. Also with her having been represented by counsel in the first action, for a while,

file with the clerk of this Court, with proof of service, an itemized and verified bill for the cost and attorney fees within fourteen days after the entry of this order. The bill should specify services rendered in only these two appeals and not in appeals docketed under 85-5101 and 85-5147 taken from the district court's order specifying the amount of costs and fees awarded in the district court.

If counsel is unable to separate his services rendered in these four appeals, counsel should divide the total amount of his costs and fees in half and assign one-half to appeals 84-6090 and 85-5032 and the other half to 85-5101 and 85-5147.

ENTERED BY ORDER OF THE COURT

Signed John P. Hehma  

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Clerk

ISSUED AS MANDATE: 3/27/86

COST: \$850.01



No. 85-5101

No. 85-5147

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

EARLENE POLYAK  
Plaintiff-Appellant

FILED  
DECEMBER 17, 1985

v.

FRANK HULEN AND  
WILMA LESNANSKY

O R D E R

Defendants-Appellees (Not recommended for full  
text publication)

BEFORE: KENNEDY and KRUMPANSKY, Circuit Judges:  
and SUHREINRICH, District Judge\*

In these two appeals, a Michigan pro se plaintiff attempts to appeal from a district court order setting an amount of costs and attorney fees awarded to the defendants under Rule 11, Federal Rules of Civil Procedure. The determination that plaintiff should be liable for costs and attorney has already been reviewed by this Court in case no. 85-5032, and that determination is not again before us in these appeals. For the reasons, which follow the Court concludes that the amount of the costs and fees is proper and reasonable under the circumstances of this case.

Initially, it is apparent that this Court lacks jurisdiction over the appeal docketed under

\*The Honorable Richard F. Schrhein, U S District Judge for the Eastern District of Michigan sitting by designation.

case no. 85-5101 because plaintiff's motion of appeal was filed during the pendency of her timely motion to dismiss the order setting the amount of costs and fees. Since the motion to dismiss challenged the correctness of the order, it is construed as a time controlling motion to alter or amend authorized Rule 59(e), Federal Rules of Civil Procedure. Miller v. Leavebworth- Jefferson Elec. Co-op., 653 F. 2d 1378, 1380 (10th Cir. 1981); Dove v. Codesco, 569 F 2d 807, 809 (4th Cir. 1978); Theodoropoulos v. Thompson-Starrett Co., 418 F 2d 350, 353 (2d Cir. 1969). Since plaintiff's notice of appeal was filed while the motion was pending in the district court, the notice of appeal was rendered a nullity by operation of Rule 4(a), Federal Rules of Appellate Procedure, Griggs v. Provident Consumer Discount Co., 459 U.S. 56 (1982) (per curiam)

The Court does, however, have jurisdiction in case no. 85-5147 to review the district court's order setting the amount of costs and attorney fees. the district court's marginal entry on the plaintiff's motion to dismiss is an order actually denying the order without prejudice for lack of

jurisdiction. With the denial of the motion, the district court's underlying judgment setting the amount of costs and fees becomes reviewable in this appeal. Cf. Peabody Coal Co. v. Local U. Mos 1734, 1508 & 1548, U.M.W., 484 F.2d 78, 81(6th Cir 1973).

Upon review of the order in light of the arguments raised by the parties in the district court and their appellate briefs, this Court concludes that the amount awarded is proper and reasonable in this case. Although the district court denied the defendants their costs as generated in this plaintiff's attempt to remove another case to the federal bar, it is apparent that work performed even before filing date of plaintiff's federal suit can be compensable in this case because the work was performed in the anticipation and preparation for the defendant's defense to plaintiff's suit. Certainly defense counsel assumed the risk that plaintiff's suit may not have been filed when he performed the anticipatory legal work; however, after it was filed, there is no reason now why the work should go by the wayside when plaintiff's suit warrents the assessment of costs

and fees against plaintiff in the first place. As to the plaintiff's argument that certain telephone calls and other work were of a personal not legal nature, we note the bitter exchange between plaintiff and counsel for defendants in the district court on this matter, and decide that it was not clearly erroneous for the district court to accept counsel's version of the facts in this case.

For these reasons, this panel unanimously agrees that oral argument is not necessary in these appeals. Rule 34(a). Federal Rules of Appellate Procedure. The plaintiff's motion for injunction is, accordingly denied. The defendant's request for cost and attorney fees in these two appeals under Rule 38, Federal Rules of Appellate Procedure, is expressly denied. The appeal docketed in case no. 85-5101 is hereby dismissed for lack of jurisdiction pursuant to Rule 9(d)(1), Rules of the Sixth Circuit; and, the district court's order setting the amount of cost's and fees, reviewed in case no. 85-5147 is hereby affirmed pursuant to Rule 9(d)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT  
John F. Hehman  
Clerk

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT  
CIVIL APPEAL PRE-ARGUMENT STATEMENT

EARLENE POLYAK Plaintiff	District Sixth	Judge Wiseman
v. FRANK HULEN AND WILMA LESNANSKY	Com. Filed 10/18/84	Docket no. 1:84-0083

Name	Address	Telephone
EARLENE POLYAK	3179 Middlefield Dr. Trenton, Mi.	(313)676-3364

APPELLEE

Defendant

ROBERT BOSTON 2100 One Commerce Place, Nashville,  
Tenn. 37239

(615)244-6380

Check as many as apply

A. Jurisdiction	District Court	Relief
	Disposition	

<input checked="" type="checkbox"/> Federal Question	<input checked="" type="checkbox"/> Final	<input checked="" type="checkbox"/> Damages
<input checked="" type="checkbox"/> Diversity	Decision	Amount sought
	of District	<u>\$60,000.00</u>
	Court	
	<input checked="" type="checkbox"/> No Trial	

NATURE OF SUIT

<input checked="" type="checkbox"/> Civil Rights	<input checked="" type="checkbox"/> Real Property
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UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT  
CIVIL APPEAL PRE ARGUMENT STATEMENT

FRANK HULEN AND  
WILMA LESNANSKY

District  
Sixth

Judge  
Wiseman

v.

EARLENE POLYAK  
Defendant

Com. Filed Docket No.  
10/1/84 1:84-0082

Name	Address	Telephone
EARLENE POLYAK	3179 Middlefield, Trenton, Mi. 48183	(313) 676-3364

Plaintiff

ROBERT BOSTON 2100 One Commerce Place  
Nashville, Tenn. 37239  
(615) 244-6380

Check as many as apply

A. Jurisdiction

District Court  
Disposition

Relief

X Federal Question  
X Diversity

X Final  
Decision of  
District Court

X Damages  
amount so  
\$60,000.00

X No Trial

NATURE OF SUIT

X Civil Rights

X Real Property



Copied from costs and fees to District Court:

... Set out below in the description of services  
 dates of services and time spent by me on behalf  
 of defendants in this matter:

<u>Date</u>	<u>Services</u>	<u>Hours Spent</u>
10/06/84	Conference with <u>W. E. Boston</u> (father) re District Court representation and factual background on case and parties	1.50
10/08/84	Preparation of Motion and Memo. in support thereof and research for same; telephone conference with state court counsel (father).	1.70
10/09/84	Telephone call with <u>W.E. Boston</u> (father) and preparation of revisions in Memo. brief.	.20
10/10/84	Preparation of motion and corres- pondence of conveyance of same (father?) Conference with United States District Court Clerk's personnel re status of pending pleadings.	.20
10/19/84	Review of plaintiff's brief and preparation of response thereto defendants; telephone conference with counsel (father).	.50
10/26/84	Preparation of responses thereto on District Court pleadings. (Decision on case no 1:84-0082, on October 26, 1984, these charged to 1:84-0083. After denial by Court.	.60
10/29/84	Preparation of responses to Polyak's subsequent District court pleading. with <u>W.E. Boston (father)</u> re status of pending matters.	.60
10/31/84	Research for res judicata effect of plaintiff's state court lawsuit.	.40
11/01/84	Review of file preparation of motion to dismiss.	.20
11/05/84	Review of status of Polyak pleadings motions telephone conference with counsel (father).	.20
11/08/84	Preparation of memo. brief re response to Plaintiff's complaint in District Court	1.10

11/9/84.	Review of Tennessee Court of Appeals	1.90
	Tennessee Supreme Court files	
	revision of memo. for defendants	
11/12/84	Preparation of motion and memo	.10
	on behalf defendant's	
11/13/84	Review of Polyak's latest pleadings	.10
	preparation of letter to Lawrence	
	County Clerk and Master's office	
	and review pleadings	
11/19/84	Preparation of filing of certified	.10
	and obtaining certification of	
	same having recored certified	
	<u>(emphasis added in duplication of record)</u>	
11/21/84	Preparation of supplemental Memorandum	.20
	to dismiss for res judicata	
11/25/84	Telephone call W.E.Boston (father).	.10
12/05/84	Review of memo; telephone conference	
	with W.E.Boston(father)	1.20
12/07/84	Preparation of revisions and correction	
	<u>in affidavit letter to W.E.Boston</u>	
	<u>re status: telephone call with W.E.</u>	
	<u>Boston(father).</u>	.80

total hours spent 12.60

Photo copies \$37.80

Long distance \$66.96

\$ 104.76

Further affiant not.

Signed Robert Boston

Robert E. Boston

Note: Mr Robert Boston entered attorney costs and fee in the Court of Appeals without serving and allowing Appellant to object and all efforts to get mandate recalled to allow objections were disregarded by the Clerk.

Appellant believes she has been denied due process and these long distance calls appear to be from Robert Boston, who lives in Nashville to his father William Boston who lives in Lawrenceburg, Tennessee.

APPENDIX A

In the Circuit Court of Lawrence County,  
Tennessee.

Buford Evans & Sons , Plaintiff v Earlene  
Polyak, Defendant, Case No. 10647.

Hearing in General Sessions Court on October 1,  
1984, appealed to Circuit Court on October 10, 1984.  
Circuit Court Clerk refused to allow appeal until  
Defendant went to County Court Clerk and brought  
back a copy of the deed to additional forty (40)  
acres of land. Jury trial scheduled for April  
session of Court in 1985.

Trial set for December 26, 1984, by the  
Honorable Jim Hamilton.

Presiding: Jim Hamilton

Motion for forty-five (45) day continuance  
denied on December 26, 1984.

Motion for Judge Hamilton to disqualify him-  
self denied on December 26, 1984.

Judgment entered on August 7, 1985.

Amended Judgment signed by Judge Hamilton on  
August 22, 1985.

Judgment and Amended Judgment appealed to the  
Court of Appeals of Tennessee, on August 29, 1985.

Copy of notice of appeal returned with letter stating Rule 5(a) amended on August 15, 1984, and no longer to send copy of notice of appeal to the Court of Appeals, on September 9, 1984.

Motion to forward records to the Court of Appeals for appeal submitted to Circuit Court on November 1, 1984.

Received letter from Circuit Court Clerk, Gerald Wilson on November 2, 1984, case closed.

Motion to forward records to the Court of Appeals denied on November 7, 1984, signed by Jim T. Hamilton Circuit Judge.

#### FACTUAL BACKGROUND

This case arises out of the plan to take property already settled by agreement in 1976, initiated by Frank Hulen and Wilma Lesnansky v. Earlene Polyak, Chancery Court Case No. 1974, located in the 14th Civil District of Lawrence County, Tennessee. As a result of this settlement by agreement, Earlene Polyak and her husband, Alex Polyak has restored and maintained the house on her agreed partition at their own expense for a retirement home to this date.

In 1982, Frank Hulen stated that he wanted the property sold so his kids could buy it, and Wilma Lesnansky joined him. They did not offer any compensation for restoration and investment in retirement home before taking the property to be sold at Public Auction. They retained William Boston, Boston Bates & Holt, who divided his loyalties and filed a complaint to sell property.

Defendant was obligated to retain Thomas Stack, Henry Henry & Stack, who promised to defend her right to her retirement home, restoration, and investment in the property. Mr. Stack stated that he needed \$1500.00 for research and to go against his friends in Lawrenceburg. He was able to get the tentative hearing scheduled by William Boston on July 15, 1983, scheduled for July 29, 1983. Prior to retaining Mr. Stack, the Honorable Jim Hamilton disregarded Defendant's request for a thirty day extension to allow her to find an attorney. Judge Hamilton sent a stating that Defendant should let him know who would represent her at this hearing.

Plaintiff, Mr. Buford Evans alleges that Mr. Stack retained him to survey Defendant's property.



she did not give Mr. Evans permission to survey her property, and her first knowledge of this survey was when Mr. Stack stated at the initial meeting with him in the Courthouse in Pulaski, Tennessee, which lasted about twenty minutes, that Mr. Evans was out measuring the farm on July 28, 1983.

Defendant was very ill as a result of travel from Michigan in heat wave of 102 degrees against nationwide warning against heart patients being exposed, and had asked for hearing to be rescheduled. She asked again on the morning of July 29, 1983, for hearing to be rescheduled to allow her to get better but Mr. Stack stated that "Mr. Boston absolutely refused to reschedule hearing."

The Honorable Jim Hamilton ordered property sold within two hours, while jury out on another trial. Hearing was conducted in Maury County, when complaint filed in Lawrence, across lines and against Tennessee law. Complainant Wilma Lesnansky did not testify, or come to hearing, and information about settlement by agreement withheld from record. Plaintiff's had agreement with Mr. Boston about cost of repair not to exceed \$500. and deny encumbrance



CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN and  
WILMA LESNANSKY,  
both citizens and  
residents of Lawrence  
County, Tennessee  
PLAINTIFFS

VS

CIVIL ACTION NO. 1974

EARLINE POLYAK, a  
non-resident presently  
residing at 3179 Middlefield Drive  
Trenton, Michigan 48163  
DEFENDANT

C O M P L A I N T

Plaintiffs would respectfully state and  
show this Honorable Court the following:

That Rena Ann Hulen died intestate on or  
about the 9th day of January 1976: that at  
the time of her death she was a some 84 years  
of age and a permnate resident of Lawrence  
County, Tennessee; and that she died seized  
and possed of a tract of land situated, lying  
and being in the 14th Civil District of  
Lawrence County Tennessee... and there are  
no known encumberancesos of the date of her  
death on said tract known to plaintiffs, and  
if there are nay encumberances upon said tract  
since her death , such is unknown to the plain-  
tiffs.

.....  
THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY  
PROCESS IN THIS CAUSE.

Signed Frank Hulen

Frank Hulen

Signed Wilma Lesnansky

Wilma Lesnansky

Sworn and suscribed before me  
this 19 day of April 1983.

Signed Gail Hughes N.P.

My comission expires: 1-11-86

WILLIAM BOSTON  
BOSTON BATES & HOLT

ATTORNEYS FOR PLAINTIFFS  
235 Waterloo Street  
P.O. Box 357  
Lawrenceburg, Tennessee 38464

We absolutely \_\_\_\_\_ land for the Cst of  
Imp not to Exceed 500/00

Signed Frank Hulen  
Signed William Boston

It appears from the above agreement on the  
bottom of the complaint page 3, that the improvement  
of the property by Defendant would not exceed \$500  
the Plaintiffs.

The order to sell the property was prepared  
by William Boston, Boston, Bates & Holt, and signed  
by William Boston, Thomas Stack and Judge Hamilton.  
Defendant called Judge Hamilton at his office in  
Mt. Pleasant, Tennessee on \_\_\_\_\_ 19, 1983, and  
complained that she did not agree to Mr. Stack  
signing this order, but Judge Hamilton disregarded  
her objections and signed order on the same day.

The taxpayer's copy of 1983, Property Receipt  
No. 500-83-07353, Mrs. Rena Ann Hulen, Summertown,  
Tennessee, shows an improved value of \$8100.00.  
Defendant is the only person who has invested any  
improvements in this property. This hearing was  
almost secret and it appears facts are covered.

as follows:

- 7 -

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN ET AL

Plaintiffs

VS

CIVIL ACTION NO. 1974

EARLENE POLYAK

Defendant

ORDER

This cause came on to be heard this the 29th day of July 1983, before the Honorable Jim F. Hamilton, Judge Part II of the Circuit and Chancery Court in Lawrence County, Tennessee, while holding Chancery Court for Lawrence County, Tennessee, upon complaint hereto filed in this cause, the answer thereto, the testimony of witness in open Court, and the entire record in this cause, whereas at the conclusion of which defendant's attorneys were granted the privilege of presenting a brief to the Court within a reasonable time, after the conclusion of which the court found in memo dated August 11, 1983, the following findings:

1. That the property in question consists of approximately 40 acres, which belonged to the parties mother.

2. That the property cannot be partitioned in kind as there are three distinctly different types of property within the 40 acres. One portion of the property includes the home place, well and barn, another portion contains woods and is a low lying wet area, and the remaining portion consists of level flat land which is suitable for raising crops.

3. The Court finds there is noway to divide this land equally between these heirs, without selling said property and dividing the proceeds.

4. The proceeds of this sale after payment of all expenses incident to sale, including attorney fees will be divided equally between the heirs, except that the cost of this case shall be deducted from the defendant's share of said proceeds.

5. This sale shall be conducted by Eualn Hooper unless the parties agree on another real estate company.

All of which is therefore, ORDERED AND DECREED  
by the Court.

This the \_\_\_\_ 19th day of Oct. 1983.

Signed Jim T. Hamilton  
Jim T. Hamilton, Circuit

APPROVED FOR ENTRY:  
BOSTON BATES & HOLT

Signed William Boston  
ATTORNEYS FOR PLAINTIFFS  
Signed Thomas Stack  
ATTORNEY FOR DEFENDANT

On December 19, 1983, Defendant raised the constitutional question by stating that she had been subjected to an unjust and unfair hearing and demanded a New Trial and submitted motion for amendment or alteration of judgment to allow compensation for monies before the idistribution of the proceeds for the restoration and maintenance of retirement home. Defendant has suspected for some time that Mr. Stack was not representing her best interest and relieved him of his services.

After Defendant relieved Mr. Stack of his services she found that her suspicions were well founded she learned that he did not enter the memorandum brief, evaluation of the property prepared by Mr. Evans, bills for the restoration and maintenance of the property since 1976, and secure a transcript of the proceedings. She found the

evaluation prepared by Mr. Evans with three parts of equal value:

Total land value.....\$33,690.00  
Total value of dwelling..... 6,330.00

The simplest and probably most equitable way to divide land in kind was to divide the land and the buildings separate. The person getting the buildings would pay the other two  $\frac{1}{3}$  of the value of the buildings.

TO RESTORE THE HOME would not be a major undertaking to remove all of the inside paper from the walls and sheet rock over wood ceiling ir repaper. The floors would be sanded into a beatiful floor or place carpet over them. Repaint the wood inside and out.

Defendant also found ariel map and a hand drawn map, which appears to be prepared by Mr. Evans. She noticed a correlation between item No. 2, of the findings supporting the reasons the property could not be divided in the Order of October 19, 1983, and the hand drawn map of the property. Defendant has observed property and finds third portion (3) has one large area of tree and large brush area, and another large brush area around middle terrace. All of area is terraced to drain and created wet area.

Property was not divided as to agreement and could be used for sale at Public Auction as it is custom to divide then sell as a whole. Maps follow:



Judge Hamilton overruled Defand's motion for a new trial and Amendment or Alteration of judgment to award Defendant from the proceeds prior to distribution for the restoration and maintenance of retirement home on December 19, 1983. Judge Hamilron instructed Defendant to appeal his dicision within ninety(90) days, and instructed Mr. Boston to prepare the judgment. The judgment prepared by Boston Bates & Eolt and signed by Charles Holt has been deemed unappealable by the Court of Appeals of Tennessee. It is as follows:

JUDGMENT

This cause came on to be heard on the 19th day of December, 1983, before the Honorable Jim T. Hamilton, Judge, upon this day filed by the defendant, personally and in her own behalf, statement and argument by the defendant Earlene Polyak, in her own behalf, from all of which the Court finds no merit, and said Motion is here and now overruled in its entirety. Judgment is signed by Charles Holt, Boston Bates & Holt and Judge Hamilton and entered on December 20, 1983.

ORDER

This cause came to be heard on this the 19th day of December 1983, before the Honorable Jim T. Hamilton, Judge Part II of the Circuit and Chancery Courts of Lawrence County, Tennessee on the motion for a new trial of amendment of judgment of the order previously filed herin by the Defendant Earlene Polyak by and through her counsel of record, Henry Henry & Stack, and upon the oral motion of Earlene Polyak to be allowed to represent pro se, and that Henry Henry & Stack be relieved as counsel and further aforementioned motion not be



not be heard in this Court. IT IS THEREFORE ORDERED Henry Henry & Stack are relieved as counsel in this cause and that aforementioned Motion for a New Trial etc. be and here by dismissed. This order was signed by Thomas Stack William Boston and Judge Hamilton and entered on January 10, 1984.

Defendant found the above order in the materials

Mr. Stack returned. She heard Judge Hamilton

instruct Mr. Stack that the Court would prepare

an order allowing him to withdraw from Defendant's case before she argued her own motions before Judge Hamilton on December 19, 1984. Mr. Stack prepared this order without Defendant's knowledge after his dismissal from her case. Defendant argued order invalid, but the Court of Appeals of Tennessee maintained that his order, instead of judgment should have been appealed.

On April 26, 1984, dismissing appeal and appeal has never been heard in this case. The pertinent part of order follows:

And it appearing from the record that appellant's motion to alter and amend was heard on December 19, 1983, that on January 3, 1984, appellant filed a notice of appeal from the final judgment entered on December 20, 1983, but the order overruling appellant's motion to alter or amend was not entered until January 10, 1984.

... and it appearing that the judgment from which appeal was sought is not a final judgment appealable as a right under TRAP Rule 3 in that said judgment orders sale of

property but does not confirm any sale or transfer title.

IT IS THEREFORE ORDERED that this appeal be and hereby dismissed at the cost to the appellant without prejudice to review of any and all actions of the Trial court by appeal prosecuted from final judgment.

Defendant believes that this order allowing the sale of her retirement home without any compensation for the restoration and maintenance unconstitutionally deprives her of her property interest without due process and just compensation. And that she suffered irreparable damage and the loss of a right to never be regained to her property.

On October 1, 1984, Defendant appeared in the Circuit Court of Lawrence County to defend her right to her property. Mr. Evans sued for the survey which was conducted without her knowledge or permission. The hand drawn map, which showed a correlation to the order to sell, appeared to be a map that could be used to sell the property at Public Auction, as it is the custom to sell in parts and then as a whole.

Defendant was not given any compensation for the restoration and maintenance of her retirement

home, the Trial Judge ordered her to pay cost of case for Plaintiffs without just compensation the Court of Appeals denied due process and just compensation, and Defendant assumed that she was further denied right to money form property by paying for the survey of this property for sale at Public Auction.

The Honorable B. E. Bryant was not in Court on October 1, 1984, but a young gentleman took his feet off of the back of a bench and conducted Court. He addressed Mr. Evans with deference and found in his favor. But stated that the Order to pay cost of survey could be appealed within 10 days.

When Defendant tried to appeal with Notice of Appeal and check for \$600.00 Bond by mail, the Circuit Court Clerk, Gerald Wilson demanded that she appeal in person, and she rode a bus all night to meet the deadline, which caused pain and suffering with her health problems. Mr. Wilson refused to allow Defendant to appeal until she went to the County Court Clerk and brought back a copy of the deed to and additional forty (40) acres of property, after she admitted to

him that she did own more property in Lawrence County. Defendant scheduled jury trial, which was to be held in April session of Court in 1985.

On November 2, 1984, Defendant received a letter from the Circuit Court Clerk stating that Judge Hamilton scheduled trial for December 26, 1984, which was followed by a telephone call. Defendant stated that she was acutely ill with heart and bronchial condition and was preparing request for continuance as physician had already recommended that she go on to Florida in hopes health would improve in warm climate. She requested continuance on December 7, 1984, with affidavit and physician's statement. Request for continuance:

IN THE CIRCUIT COURT  
FOR  
LAWRENCE COUNTY, TENNESSEE

BUFORD EVANS  
Plaintiff

VS

Appeal No. 10647  
General Sessions No. 7196

EARLENE POLYAK  
Defendant

REQUEST FOR CONTINUANCE

Defendant Earlene Polyak, requests a forty-five day continuance to the above styled case on the jury docket for December 26, 1984, at 9:00A.M. This request is necessary because of the extreme burden her appearance in Trial Court would place

on her health at this time. Defendant's physician is preparing a letter which will be enclosed with this request. She also encloses Affidavit as to the status of her health at this time.

Signed Earlene Polyak  
Earlene Polyak  
3179 Middlefield Drive  
Trenton, Michigan 48183  
(313)676-3364

Date: December 5, 1984

Defendant needed further medication upon arriving in Florida, and required treatment for bronchial condition and eyes. She kept calling the Court to find out if the Continuance had been granted, and finally was allowed to talk to Judge Hamilton. He ordered her to Court on December 26, 1984. Defendant submitted a Motion for Disqualification on December 20, 1984, with Affidavit. Motion follows:

IN THE CIRCUIT COURT  
FOR  
LAWRENCE COUNTY, TENNESSEE

BURFORD EVANS  
Plaintiff

VS

Appeal No. 10647  
General Sessions No. 7196

EARLENE POLYAK  
Defendant

MOTION FOR DISQUALIFICATION

Defendant Earlene Polyak, move that the Honorable Jim Hamilton disqualify himself from the above styled case and all cases in the Chancery and Circuit Court of Lawrence County involving the defendant, due to the unfavorable opinions

formed without consideration of said defendant, and apparent dislike, which may result in injury to her health.

Defendant was informed by the Court Clerk that the Jury Trial which she requested to the above styled appeal would be held in April, 1985. She was informed that the Honorable Jim Hamilton scheduled this trial for December 26, 1984. Defendant requested continuance on December 7, 1984, submitted with a statement from her heart specialist, and an Affidavit as to the status of her health. On December 20, 1984, defendant contacted Judge Hamilton agains requesting Order for continuance due to further difficulties with her health, and he refused.

Judge Hamilton has never granted any orders, Motions, or petitions submitted to the Court by the defendant. He is aware of defendant's health and the fact that she will have to travel December 24 and 25, to appear in Court December 26, 1984, which will damage and injure her health and ability to defend her legal rights and claims.

By Signed Earlene Polyak  
Earlene Polyak  
4063 Hood Road  
Lake Park, Florida 33410

Date: December 22, 1984  
Notarized by Notary public

Defendant's husband obligated to come by airplane to Florida, and he and her son drove 900 miles with defendant on back seat of car on pillows to Lawrenceburg, Tennessee for trial. She had not expected to go to trial, she did not have time to look for lawyer, and obligated to try to defend by relying on oxygen and numerous medications. She was too ill to even review notes. Defendant did retain local Court Reporter for transcript of



proceedings:

THE CIRCUIT COURT OF LAWRENCE COUNTY  
LAWRENCEBURG, TENNESSEE  
HON. JIM T. HAMILTON, PRESIDING

BUFORD EVANS  
Plaintiff  
VERSUS

EARIENE POLYAK  
Defendant

JURY TRIAL  
Reporter's Partial Transcript  
December 26, 1984

APPEARANCES FOR COUNSEL  
For Plaintiff

Larry Douglas Brandon  
320 East Main Street  
Murfreesboro, Tennessee  
615-890-8517 37130

For Defendant

In Propria Persona

JAMES LEONARD HOBBY  
Court and Deposition Reporter  
355 Holly Grove Road  
Lewisburg, Tennessee 37091  
(615)359-4455

Defendant ordered parts of the above transcript which describe the prejudice she believes Judge Hamilton displayed toward her to prejudice the decision maker. Judge Hamilton denied Motion to Disqualify himself over Defendant's objections and ordered her to trial for the third time without any preparation.

Evans v. Polyak pages 4 5 6

MRS. POLYAK: ... I have requested a continuance...  
My doctor, Dr. Delfan Santos...

Her diagnosis is as follows: coronary artery disease

unstable angina, lung atelectasis, which affects her ability to perform even basic duties.

Patient is on several medications for her condition. Because of patient's multiple health problems and acute arthritis, we recommend the patient to seek a warmer climate.

.... When I was in Florida, Dr. Herman said, Mrs Polyak is in poor health with cardiac problems necessitating immediate medication.

I called several times to tell you that I have another doctor down there. I had another arthritic attack there. My eyes, I could not see.

I came here with --my son and my husband brought me in the back seat of a car on pillows and I have been in a motel all day, and I took oxygen, last night to be here.

And I think this is harrassment to bring me here, today, in my state of health and against the Constitution, in which it says the eight ... that we should not be inflicted with cruel and unusual punishment, and I think it is unusual punishment for my health to be here today.

THE COURT: All right, since we have the jury here...

MRS POLYAK: Your Honor, I have already listened to the jury in the hallway. I understand they are tired and they don't want to be here, because its Christmas. I understand this jury has been coming in quite a while. I already feel their hostility toward being here.

THE COURT: Well,

MRS.POLYAK: and I want to put this on record.

THE COURT: Well, you've got it on record... I am going to overrule your motion asking me to disqualify myself. I'm going to overrule that motion.....

Evans v Polyak 35 36 37

Thomas Stack testifies against Defendant (former attorney. Plaintiff believes Judge prejudiced Q. Didn't I put my own notice of appeal in on November 14, 1984? You had not appealed case

MR. STACK: Your, Honor--

THE COURT: Mrs. Polyak I am going to interrupt you, here, and I'm going to make a statement to this Jury concerning that aspect, although it is irrelevant to this case. I don't know the exact dates but I will tell this jury that M. Stack appeared in my Court. He had filed a motion for a new trial ... He appeared in my Court on the day that he was to appear to argue motion, before me, seeking for me to change my mind and grant new trial.

Prior to that argument, Mrs Polyak appeared there and asked me to allow her to relieve Mr. Stack from any further representation...

I then allowed Mrs. Polyak to file her own motion, which was done in her own handwriting on a yellow piece of legal paper. I did over strenuous objection of counsel on the other side, who was Mr. Boston. I overruled his objections and allowed her to present that as her motion for a new trial. I allowed her, that day, over strenuous objections from Mr. Boston to argue that case and argue that motion on her own behalf.

Mr. Stack, I assume, was back in Pulaski, peacefully practicing law and I want you to understand that that is what he did in this case and I am not going to entertain any further questions concerning that Mrs. Polyak...

MRS POLYAK: I have one question.

THE COURT: All right. Ask it.

Q.BY MRS POLYAK: Mr. Stack did you hear Mr.Boston Object---

THE COURT: I'm not going to allow that. I'll say this and I put it in the record, Mr. Boston objected strenuously, that day....

MR STACK: Your Honor, if I may... there was a long delay in the order actually being entered.

EVANS V POLYAK

ALEX POLYAK testifies. Defendant believes jury prejudiced again by Judge Hamilton when he yelled at her for about the fifth time. Page 39 40

THE COURT: Mrs. Polyak, I hate to interrupt you but I 'm interested in his testimony concerning any knowledge he has of what the issues of the

lawsuit we are here about today, is, and that is the contract with Mr. Evans (Defendant did not have a contract with Mr. Evans).... that's what you need to ask about.

MRS POLYAK: Your Honor, I would like to establish that this man is a well-respected man. He has come to Tennessee.

THE COURT: All right I'll take it--

MRS POLYAK: He has worked in the woods--

THE COURT: Mrs. Polyak, you wait just a minute when I say something.

MRS. POLYAK: Yes sir.

THE COURT: I'll take judicial notice and I am sure he is a well-respected man.... Now if he knows anything about that contract, that's what I want to hear.

Evans v Polyak pages 52 53

JUDGE HAMILTON: (part of jury instruction)

Ladies and gentleman, you have heard a lot in this case about a partition suit. Now, I'm going to very briefly define for you, basically, what a partition suit is.

A partition suit is a suit that is brought by one or more heirs to an estate. For instance if you have four children in an estate and there is left to them in equal shares, a tract of land. If they are unable to agree upon an equal division of that land then one or more of them may file in court what is called a partition suit and ask that the land be sold and the proceeds of the sale divided equally among the heirs, and that is what a partition suit means.

One side says, "we can't divide it, equally any way except to sell it and divide the money, equally. The other side says, "No that's not true. We think we can divide the land up and give an equal portion of the land, so that is basically what a partition suit means..... ( The Judge reads from a red book defining the law on agency, which the Court reporter left out of the transcript).

.....

Although desperately ill with bronical and heart problems, Defendant was obligated to appear at this trial on short notice, without knowledge of law or any preparation and try to defend her constitutional right to an additional forty(40) acres of property the Circuit Court Clerk was holding a copy of the deed. She and her husband were required to both sign a bond. Defendant believes Judge Hamilton influenced this jury, and there are many more examples in this transcript.

On December 26, 1984, Defendant checked Notice of Nonsuit in Circuit Court Case Nos. 10611, Earlene Polyak v William Boston, Boston Bates & Holt, and 10612, Earlene Polyak v Thomas Stack, Henry Henry & Stack, and found what appears to be objections to the sale of her property in Chancery Court on Circuit Court Cases with orders to pay costs case with execution.

Defendant submitted Notice of Nonsuit of Nonsuit on August 31, 1984, and she was finally able to contact Judge Hamilton on October 31, 1984. In this telephone conversation, Judge Hamilton stated that he had signed an order dismissing all of her cases in Lawrence County:

CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE

EARLENE POLYAK  
Plaintiff

VS

CIVIL ACTION NO. 10611

WILLIAM BOSTON  
BOSTON BATES & HOLT

NOTICE OF NONSUIT

Plaintiff Earlene Polyak, pursuant to Rule 41.01, Tennessee Rules of Appellate Procedure, hereby give notice of nonsuit without prejudice in Civil Action No. 10611, filed against William Boston Boston Bates & Holt on July 27, 1984, to Plaintiff refiling cause of Action.

Date: August 31, 1984

Signed Earlene Polyak  
Earlene Polyak  
3179 Middlefield Drive  
Trenton, Michigan 48183

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE

EARLENE POLYAK  
Plaintiff

vs

No. 10611

WILLIAM BOSTON  
BOSTON BATES & HOLT

O R D E R

This cause came on to be heard and was heard on the 9th day of October, 1984, before the Honorable Jim T. Hamilton, Circuit Judge on motion of the Plaintiff for this Court to enjoin the sale of certain real estate, which was recently ordered sold from a partition suit which was heard in Chancery court in Lawrence county, Tennessee.

The chancery court heard proof, ordered the real estate sold for partition. the plaintiff appealed this decision to the Court of Civil Appeals where the decision of Chancery was upheld. The plaintiff then petitioned the Supreme Court of Tennessee for Certiorari, and this was denied.



It is therefore Ordered, by this Court that the motion of the plaintiff for this Court to enjoin the sale of this real estate for partition be dismissed. It is further ordered that the cost of this case be adjudicated against the defendant for which execution may issue if necessary.

This the 9th day of October, 1984.

Signed Jim T. Hamilton  
Circuit Judge

APPROVED FOR ENTRY:

EARLENE POLYAK PLAINTIFF

WILLIAM BOSTON DEFENDANT

II) CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE

EARLENE POLYAK  
Plaintiff

VS

CIVIL ACTION NO. 10612

THOMAS STACK  
HENRY HENRY & STACK  
Defendant

NOTICE OF NONSUIT

Plaintiff Earlene Polyak, pursuant to Rule 41.01, Tennessee Rules of Civil Procedure, hereby gives notice of nonsuit without prejudice, in Civil Action No. 10612, filed against Thomas Stack Henry Henry & Stack on July 27, 1984, to Plaintiff refiling of cause of action.

Date: August 31, 1984.

Signed Earlene Polyak  
Earlene Polyak  
3179 Middlefield Drive  
Trenton, Michigan 48183

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE

EARLENE POLYAK  
Plaintiff

VS

No. 10612

THOMAS STACK  
HENRY HENRY & STACK

O R D E R

This cause came on to be heard and was heard

on the 9th day of October 1984, before the Honorable Jim T. Hamilton, Circuit Judge on the Motion of the Plaintiff for this Court to enjoin the sale of certain real estate, which was recently ordered sold from a partition suit which was heard in the Chancery Court for Lawrence County, Tennessee.

The Chancery Court heard proof, and ordered the real estate sold for partition. The plaintiff appealed this decision to the Court of Civil Appeals, where the decision of the Chancery was upheld. The plaintiff then petitioned the Supreme Court of Tennessee for Certiorari, and this was denied.

It is therefore Ordered, by this Court that the Motion of the plaintiff for this Court to enjoin the sale of this real estate for partition be dismissed. It is further Ordered that the cost of this case be adjudicated against the defendant for execution may issue if necessary.

Signed Jim T. Hamilton  
CIRCUIT JUDGE

APPROVED FOR ENTRY:

EARLENE POLYAK PLAINTIFF

THOMAS STACE  
HENRY HENRY and STACE

Defendant was not in this Court on October 9, 1984. She did not arrive to appeal Case No. 10647, Buford Evans v Earlene Polyak until about 1:30 P.M. on October 10, 1984.

On February 4, 1985, Defendant received the transcript of the Proceedings in Case No. 10647 Buford Evans V. Earlene Polyak. Judge Hamilton did not enter the judgment in the Circuit Court to be appealed to the Court of Appeals of Tennessee.

On May 3, 1985, the Court of Appeals denied  
Application for Permission to Appeal.

COURT OF APPEALS OF TENNESSEE  
MIDDLE SECTION AT NASHVILLE

BUFORD EVANS  
Plaintiff-Appellee  
VS  
EARLENE POLYAK  
Defendant-Appellant

O R D E R

The defendant, Earlene Polyak, has filed with this Court an application for extraordinary appeal. Said application complains of various actions of the Trial Judge during a trial, but does not designate, describe or exhibit a copy of any order or judgment of the Trial Judge.

There is no showing of why an appeal as of right or appeal by permission is not available to applicant.

It is therefore ordered that said application for extraordinary appeal be denied.

ENTER MAY 3, 1985

Signed by Judges

HENRY F TODD  
PRESIDING JUDGE

SAMUEL L. LEWIS

BEN H. CANTRELL

WILLIAM C. KOCH JR.

Application for Rehear of Application for Permission to Appeal was denied on May 17, 1985 by the above named Judges of the Court of Appeals of Tennessee.

Application for Permission to Appeal to the Supreme Court of Tennessee was denied, <sup>8/26/85</sup> but Judge

Hamilton signed Judgment on August 7, and Amended Judgment on August 22, 1985.

STATE OF TENNESSEE  
CIRCUIT COURT OF LAWRENCE COUNTY

In the Circuit Court for Lawrence County, Tennessee  
Civil Action No. 10647

BUFORD EVANS & SONS  
Plaintiffs

v

NOTICE OF APPEAL

EARLENE POLYAK  
Plaintiff

Notice is hereby given that Earlene Polyak, defendant above named, hereby appeals to the COURT OF APPEALS OF TENNESSEE, from the final judgment entered in this action on the 7th day of August 1985, and the amended judgment signed on the 22nd day of August 1985, by the Honorable Jim Hamilton.

Signed Earlene Polyak  
Earlene Polyak  
3179 Middlefield Drive  
Trenton, Michigan 48183  
(313) 676-3364

Date: August 29, 1985

Defendant submitted parts of the Record to be included on Appeal and Issues to be presented with certificate of service. Issues :

1. Whether Judgment should be set aside as a result of Judge Hamilton's treatment of Appellant before the jury, prejudicing the decision maker and the judicial process.

2. Whether Judge Hamilton should have obligated Appellant to defend herself without counsel while acutely ill and against letters of physicians verifying illness, and Judgment should be set aside.

3. Whether Appellant obligated to pay Buford

Evans for measuring property that had already been appraised, when he did not have her permission and she did not have knowledge of his measuring her property, and no contract with him, and decision should be set aside.

4. Whether Buford Evans possessed valid Surveyor's License and measurement of property according to scale, accurate description of land, and decision should be set aside.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing description of papers, parts of transcript, and issues to be appealed has been mailed to all parties of interest in this pleading.

On September 9, 1985

Signed Earlene Polyak

COPY MAILED TO:  
Mr. Larry Brandon  
Attorney at law  
Murfreesboro, Tennessee 37133

Mr. Ramsey Leathers Clerk  
100 Supreme Court Building  
Nashville, Tennessee 37219

COURT OF APPEALS  
STATE OF TENNESSEE  
NASHVILLE 37219

September 9, 1985

Dear Counsel:

RE: BUFORD EVANS  
VS  
EARLENE POLYAK

We are returning herewith the copy of the notice of appeal forwarded to this office in the above case.

An amendment to Rule 5(a) of the Tennessee Rules of Appellate Procedure effective August 15, 1984, deleted the requirement that a copy of the notice of appeal be filed with the clerk of the appellate court.

Signed Ramsey Leathers  
Ramsey Leathers, Clerk

Letter closing case:

October 1, 1985

Mrs. Earlene Polyak  
3179 Middlefield Drive  
Trenton, Michigan 48183

RE: Buford Evans vs  
Earlene Polyak  
Civil Action #10647

Dear Mrs. Polyak:

We received an Order which was entered on September 30, 1985, denying your Petition to Rehear the Denial of the application for permission to appeal.

We therefore consider this case closed until we hear differently from the Supreme Court.

Sincerely yours,  
Signed Gerald Wilson  
Circuit Court Clerk  
cc. Judge Jim T. Hamilton  
Judge James L. Weatherford  
Buford Evans  
Larry D. Brandon

Defendant tried to explain that application to appeal should not effect appeal as a right, and that notice of appeal was properly before the Court. Judge Hamilton denied request for restraining order against the sale of property.

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENN

BUFORD EVANS & SONS  
Plaintiff

vs

CIVIL ACTION NO.10647

EARLENE POLYAK  
Defendant

O R D E R

This case came on to be heard and was heard on the 17th day of October, 1985, before the



Honorable Jim T. Hamilton, Circuit Judge.

It appeared to the court that the Motion of the Defendant is not well taken and should not be granted.

It is therefore ORDERED that the Motion for a Restraining Order is hereby denied.

This 17th day of October, 1985.

Signed Jim T. Hamilton  
Jim T. Hamilton  
CIRCUIT JUDGE

Defendant submitted a motion to forward the records for appeal in Case No. 10647, to the Circuit Court of Lawrence County, Tennessee on November 1, 1985. Judge Hamilton denied this motion:

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENN  
BUFORD EVANS & SONS  
vs  
EARLENE POLYAK  
CIVIL ACTION NO: 10647

O R D E R

This case came on to be heard and was heard before the Honorable Jim T. Hamilton, on plaintiffs Motion to Forward records of this case from the Circuit Court of Lawrence County, Tennessee to the Court of Civil Appeals.

IT IS ORDERED by the Court that Plaintiff's Motion be denied.

This 7th day of November, 1985.

Signed Jim T. Hamilton  
JIM T. HAMILTON  
CIRCUIT JUDGE  
PART 1

APPENDIX B

In the United States District Court, Middle District of Tennessee.

Buford Evans & Sons, Plaintiffs v. Earlene Polyak, Defendant. Case No. 1:85-0120

Petition for Removal filed on November 12, 1985, with copies of proceedings, issues, parts of the record, Request for restraining order against sale of property copy of partial transcript of proceedings, Notice of petition for removal to Mr. Gerald Wilson Circuit Court of Lawrence County, and to Mr. Larry Brandon, Attorney for Mr. Evans, and Removal Bond. Jury Trial Requested.

Bond: Earlene Polyak was not allowed to appeal to Circuit Court by Mr. Gerald Wilson, Circuit Court Clerk, until she went to County Court and brought copy of deed to additional forty(40) acres to him on October 10, 1984. Mr. Alex Polyak was also required to sign Bond on December 26, 1984, Case No. 10647.

Dismissed: November 27, 1985, within 20 days without oral argument or any kind of hearing.

Presiding: The Honorable Thomas A Wiseman Jr.

SUMMARY

The United States District Court was petitioned

for removal of the above styled civil action on the ground that Petitioner has been denied by state court proceedings her rights secured and guaranteed to her by laws providing for equal civil rights if citizens of the United States by the Fifth and Fourteenth Amendments. Such denial continues to occur in that Petitioner has been denied due process and equal treatment and the constitutional right to a fair trial and appeal as a right in the Circuit court of Lawrence County. The deprivation of her right to her property is irreparable damage and loss of a right to never be regained to her property.

After The Honorable Jim Hamilton denied Defendant's motion to forward the records in this case to the Court of Appeals of Tennessee, she filed a complaint against Jim Hamilton, Individually and in his judicial capacity, Jointly and Severally and the Circuit Court of Lawrence County, Tennessee, Case No. 1:85-0116, on November 8, 1985. She submitted the petition to remove Buford Evans & Sons Case No. 10647, from the Circuit Court of Lawrence County, Tennessee and to join to Case against Jim Hamilton and Circuit Court of Lawrence

County pursuant to 28 USC 1441(c). District Court Case No. 1:85-0120, Buford Evans & Sons v Earlene Polyak was filed on November 12, 1985.

CIVIL COVER SHEET

Plaintiffs	Defendants
BUFORD EVANS & SONS	EARLENE POLYAK
233 East Gaines St.	3179 Middlefield Drive
P.O. Box 190	Trenton, Michigan 48183
Lawrenceburg, Tennessee	
38464	

Attorney  
Larry Brandon  
P.O. Box 5065 Uptown Station  
Murfreesboro, Tennessee 37133

---

CAUSE OF ACTION

Deprivation of Civil and Constitutional Rights provided in the Fifth and Fourteenth Amendments

---

(Reverse Side)

Date 11/8/85

The above case is being petitioned for removal from the Circuit Court in Lawrence County, Tennessee in conjunction with Complaint against Jim T. Hamilton, Individually and in his judicial capacity, Jointly and severally, and the Circuit Court of Lawrence County, which was submitted to this Court on November 7, 1985.

Appellant alleges that her Civil and Constitutional Rights as provided by the Fifth and Fourteenth Amendments have been violated as the result of denial of right to appeal as stated in Tennessee State Laws, and the Federal Laws of the United States.

CAUSE OF ACTION

Appellant believes that the denial of right to appeal is deprivation of Civil and Constitutional Rights guaranteed by the Fifth and Fourteenth Amendments.

Complaint No. 1:85-0116 was dismissed within five days of filing on November 13, 1985, follows:

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE

Received for Entry  
November 13, 1985

EARLENE POLYAK  
VS

JIM T. HAMILTON, Individually  
and in his judicial capacity as  
Circuit Judge, Jointly and severally  
and the CIRCUIT COURT OF LAWRENCE  
COUNTY

ORDER

For reasons stated in the Memorandum contemporaneously filed herewith, the application for extraordinary relief is denied and the case is dismissed on the Court's own motion. No process shall issue but a copy of this memorandum will be mailed to defendants.

Plaintiff Polyak is expressly enjoined from filing any further actions in this Court regarding partition for sale of property in Lawrence County without express permission of this Court.

Signed Thomas A. Wiseman  
THOMAS A. WISEMAN JR.  
CHIEF JUDGE

The above styled case was dismissed within five days including a week end after filing without oral argument or any kind of hearing. Judge Wiseman issued an injunction against Defendant filing further cases in the United States District Court.

Case No. 1:85-0120, Buford Evans v Earlene was dismissed within 14 days after filing without oral argument or any kind of hearing. Defendant was afraid to submit Petition to Rehear, wrote letters.

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE

BUFORD EVANS & SONS

ENTERED NOV 26, 1985

VS

Civil Actoin No.

EARLENE POLYAK

1:85-0120

ORDER

Before this Court is the pro se Petition for removal of suit for property survey, filed by Earlene Polyak. This is the fifth(fourth) under different headings but all delaing with Mrs Polyak dissatisfaction with a state court action in Lawrence County in a partition suit brought by a surveyor to collect his fees. The Court has dismissed prior actions, and has enjioned Mrs Polyak from attempting to oigitate this matter in this Court, and from filing any further suits arising out of the partition suit.

This case is another mistaken effort on Mrs. Polyak's part. Because it was lodged before the Court issued its injunction, it is not subject thereto.

This case is not removable for several reasons  
1. 28 USC 1446(b) requires petition for removal to be filed within 30 days after receipt of the defendant of the initial pleading set forth the claim for relief upon which processing is based.



Suit was filed in Lawrence County General Sessions Court, and Mrs Polyak encloses a letter to her dated August 20, 1984, from the Secretary of the state notifying her of suit with an appearance of September 12, 1985, and is therefore untimely over a year.

2. The suit for a debt allegedly due Evans in the amount of \$475.00. Jurisdiction of this Court for removal is governed by 28 USC 1441(a) cases in which this court would have original jurisdiction.

Although Mr. Evans suit against Mrs Polyak is between citizen's of different states the amount in controversy is the amount Mr. Evans sued for \$475.00 not amount Mrs Polyak claims to have lost in adverse judgment of the court in the partition suit. A Counter-claim cannot supply the necessary prerequisite of \$1000.00 amount in controversy 28 USC 1332.

3. The petition must be verified. It is not.

4. The petition must contain a copy of the process and pleadings served upon her 28 USC 1446, It does not.

5. The petition must be accompanied by a bond with good surety. There is not surety on Mrs Polyak

dismissed Rule 9(d)(1) Rules of the Sixth Circuit  
(docket control).

ENTERED BY ORDER OF THE COURT

Signed John P. Hehman  
Clerk

ISSUED AS MANDATE 6/13/86

Mrs Henderson allowed Appellant to submit  
Petition to Rehear. Appellant appealed on being  
denied civil and constitutional rights and appeal  
as a right which is supported by Tennessee law  
and case was joined to 1:85-0116 in the District  
Court under 28 USC 1441(c), and diversity of  
citizenship. She also appealed under 28 USC 1443(1)  
and under 28 USC 1441(d), which states... except  
that an order remanding a case to the state court  
from which it was remanded pursuant to 1443 of this  
title shall be reviewable by appeal or otherwise.  
Appellant believes that the invalid map and the  
survey of her property without her knowledge or  
permission and the fact that this information  
can be used for sale at her expense at Public  
Auction allows for waiving time under 60.02 FRCivP.

Appellant believes that this Petition to  
Rehear was taken before the same panel and it  
appears that rehear was not even considered

Appellant appealed the final order dismissing the petition to remove the above case from the Circuit Court of Lawrence County on the ground that she had been denied by State Court proceedings her rights guaranteed to her by the laws providing for equal civil rights of citizens of the United States, and such denial continues to occur in what she had been denied appeal as a right to this case, which was properly before the Court, by Judge Hamilton denying the order to forward the record to the Court of Appeals of Tennessee, on November 7, 1985.

Appellant placed Complaint No. 1:85-0116, against Judge Hamilton and joined this case No. 1:85-0120 by 28 USC 1441(c) ... is joined with one or more claims or causes of action, the entire case may be removed to District Court. She had already been granted a thirty day extension of time due to illness, had just mailed briefs on Case No. 1:85-0116, and was starting the brief in this case when she received a copy of a letter confirming a conversation between Mrs Yvonne Henderson Case Supervisor, and Mr. Evans lawyer, Mr. Larry Brandon, and dismissal of the case

- 40 -

Law Office of

LARRY DOUGLAS BRANDON  
528 North Walnut Street  
Murfreesboro, Tennessee 37133-5065  
(615) 890-8517

February 21, 1986

Mrs Yvonne Henderson  
United States Court of Appeals  
Sixth Circuit  
U.S. Post Office & Courthouse Building  
Cincinnati, Ohio 45202

Re: Case No 85-6135  
Buford Evans et al  
vs Earlene Polyak  
District Court No.  
85-0120

Dear Mrs Henderson:

This letter will confirm our conservation of Friday February 21, 1986 whereby I indicated that I have no intention in participating in the appeal of Mrs. Polyak to the United States Court of Appeals. Please enter this letter for the record. Thanks for your cooperation. I am,

Sincerely,  
Larry D. Brandon

cc: Earlene Polyak  
4063 Hood Road  
Lake Park, Florida 33418

Mr. Buford Evans  
P.O. Box 190  
Lawrenceburg, Tennessee 38464

When Appellant stated that Mr. Brandon had not been relieved as according to Court rules, she stated that they were not going to force any attorney to appeal case. Prior to this, Mrs. Henderson had stated that appeal could not be consolidated with No. 1:85-0116, and dismissal of this case followed,

APPENDIX C

RELATED CASES

UNITED STATES DISTRICT COURT  
Middle District of Tennessee  
800 United States Courthouse  
Nashville, Tennessee 37203

Office of the Clerk

615-251-7178

DATE: MAY 02 1986

RE: 1:84-0082; 1:84-0083;  
1:85-0116; 1:85-0120; 1:85-  
0125 and 3:85X-108

JUDGE WISEMAN

ENCLOSED IS A COPY OF THE FOLLOWING:  
ORDER(S)

signed by the Judge on MAY 02 1986 and entered on  
the docket by the Clerk on MAY 02 1986 in the  
above styled civil action.

CLERK U. S. DISTRICT COURT

by: SHARI TIPTON

Enclosure

xc: John Hehman, Sixth Circuit Court of Appeals  
Earlene Polyak  
William Boston  
Larry Brandon  
Joe W. Henry Jr.  
Thomas Stack  
Charles Holt  
Robert E. Boston

an equal opportunity employer

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
MAY 2 1986

IN RE:  
EARLENE POLYAK

ORDER

I hereby rescue myself from all matters involving Mrs. Earlene Polyak. These matters are to be returned to the clerk for reassigning. The judge to whom these matters are assigned should be furnished with all previous filings and closed cases involving Mrs. Polyak including order of the undersigned enjoining her from filing further cases for the purpose of consideration of whether a show cause order should issue to her to show cause why she should not be held in contempt of such order.

Signed Thomas A. Wiseman Jr.

This order was appealed on May 7, 1986, and after waiting for a briefing schedule, which did not arrive after motions and telephone calls a brief was filed by Petitioner. The Honorable Thomas A. Higgins, District court refused filing copy of brief and it was returned.



UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE 37203

April 30, 1986

Mr. John F. Hehman, Clerk  
United States Court of Appeals  
for the Sixth Circuit  
U.S.P.O. & Courthouse Building  
Cincinnati, Ohio 45202

Re: Case No. 86-5462, Mrs. Earlene Polyak  
Petition for Writ of Mandamus

Dear Mr. Hehman,

This petition complains of the action of the undersigned in failing to file and issue process on a complaint of Mrs Polyak against William E. Boston. I have not previously acted upon this complaint because I was considering the issuance of a show cause order upon Mrs. Polyak to show cause why she should not be held in contempt of the previous order of November 13, 1985, whereby Mrs Polyak was enjoined from further filing any further suits in this court arising out of the partition sale of her property in Lawrence County. That order was entered because of the previous filings of Mrs Polyak against various members in this Court, all stating essentially the same facts , and all arising out of state court proceedings which had been fully litigated and adjudicated. I felt that Mrs Polyak was abusing the process of the courts. My decision in that regard is reinforced by the petitions for writ of mandamus received today. She has taken an inordinate amount of this court's time to the detriment of other litigants and should be severely sanctioned therefor.

I have rescued myself from further consideration of this or any matters concerning Mrs. Polyak. A copy of that order is enclosed. Please consider this my response to the petition filed herein.

Yours very truly,

Thomas A. Wiseman Jr.

cc: Mrs Earlene Polyak

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE 37203

April 30, 1986

Mr. John F. Hehman, Clerk  
United States Court of Appeals  
for the Sixth Circuit  
U.S.P.O. & Courthouse Building  
Cincinnati, Ohio 45202

Re: Case No 86-5460, Mrs Earlene Polyak  
Petition for Writ of Mandamus

Dear Mr. Hehman:

I frankly do not know how to answer this petition. It appears Mrs Polyak wants me to change the records of the Clerk's office from February 7, 1986, to February 6, 1986 so as to make her appeal timely. This I refuse to do

Yours very truly,

Signed Thomas A Wiseman Jr.

This writ of mandamus concerned the disregard of motions to correct record and schedule jury trial in Thomas Stack Henry Henry & Stack No: 1:85-0125. The Court of Appeals did take jurisdiction and correct notice of appeal to Denial of Reconsideration of Restraining Order Appeal No. 85-5199, denied by Judge Wiseman. Notice of Appeal was mailed by certified mail on February 3, 1986, by certified mail and timely received before February 6, 1986. This case is pending in the Court of Appeals, and is further evidence of denial of due process in the District Court.

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

SARLENE POLYAK

Received for entry  
November 13, 1985

VS

Civil Action No. 1:85-  
0116

JIM T. HAMDEN, Individually  
and in his judicial capacity as  
Circuit Judge, Jointly and severally,  
and The CIRCUIT COURT OF LAWRENCE  
COUNTY

ORDER

For the reasons stated in the Memorandum  
contemporaneously filed herewith, the application  
for extraordinary relief is denied and the case  
is dismissed on the Court's own motion. No process  
shall issue but a copy of this memorandum will  
be mailed to defendants.

Plaintiff Polyak is expressly enjoined from  
filing any further actions in this Court regarding  
partition sale of property in Lawrence County  
without express permission of this Court.

Signed Thomas A. Wiseman

THOMAS A. WISEMAN JR.  
CHIEF JUDGE

Note: The above case was entered and dismissed  
within five days of filing including a week end  
and summons were not issued, without any oral  
argument or hearing of any kind.

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK

DEC 3, 1985 FILED

V

NO. 1 85 0125

THOMAS STACK

ORDER

Although improperly styled "Petition for Removal this case appears to be an action for attorney negligence. Diversity exists, and jurisdictional amount is alleged. This pleading has been indulged with every reasonable presumption because of plaintiff's pro se status. Although it contains many of the same allegations and requests for relief made in plaintiff's numerous other frivolous filings in this Court, this petition presents allegations of attorney negligence or malfeasance which allow it to survive initial review. It is filed within one year after the order on nonsuit was entered by Judge Hamilton (Judge Weatherford signed) of similar suit in Lawrence County.

The injunction hereto issued prohibiting Mrs. Polyak filing further suits in this Court is modified to permit the filing of this petition. The Clerk will file and issue process.

Signed Thomas A Wiseman Jr.

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK  
Plaintiff

VS

JURY DEMAND  
No. 1:86-0036

WILLIAM BOSTON  
BOSTON BATES & HOLT  
Defendants

MOTION TO SCHEDULE JURY TRIAL

Plaintiff Earlene Polyak moves that this honorable Court schedule jury trial in the above styled case. She has submitted a motion to correct appeal to show that she appealed denial of petition to rehear pretrial issues and closing case by the honorable Thomas A. Higgins an August 1, 1986, pursuant to FRAP "order or part thereof appealed from". Plaintiff contends that the District Court's failure to schedule jury trial denies pro se litigant equal access to justice. She moves that the above styled case be placed on the active docket of October 1986, or April, 1987.

On the 18th day of September, 1986.

Respectfully submitted,

Name & address  
Certificate of service.

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK

Plaintiff

VS

JURY DEMAND

NO. 1:85-0125

THOMAS STACK

HENRY HENRY & STACK

Defendants

THIRD MOTION TO SCHEDULE TRIAL

Plaintiff Earlene Polyak, moves that the Court schedule jury trial in the above styled case. First motion to scheduled jury trial submitted on November 18, 1985, second motion submitted on June 20, 1986, The complaint was answered pursuant to Rule 7 FRAP on June 4, 1986. Plaintiff believes that pursuant to Local Rule 11 (a)(2) she is exempt to pretrial conferences scheduling conferences and pretrial procedure. She asked for jury scheduled in October, 1986, and due health problems and convenience of the Court suggested alternative of April 1987. Plaintiff moves for jury trial date on docket so she will know when to expect to appear and make preparations for appearance in Court.

On 18th day of September 1986.

Signed Earlene Polyak  
with address and telephone no.



